

Declarations and Pleadings,

I N

The most usual ACTIONS brought in
the several Courts of *King's Bench* and
Common Pleas at *Westminster*,

V I Z.

SCANDAL of Peers respecting their *Honour*.
SLANDER of Common Persons respecting their
Life, Liberty, Estate, Office, Reputation, &c.

In ACTIONS of

CASE { On Bills of Exchange, Policies of As-
surance, **SAVOY**
On Promises { Express'd Written,
or **LAW SCHOOL** Printed,
Contracts, { Implied, and Parol.
For { Non-**LIBERTY** Negligences,
Malfeasance and Torts, &c.

ACCOUNT against *Bailiffs, Receivers and Guar-
dians, &c.*

COVENANT on *Agreements, Leases, Grants, &c.*

DEBT on *Bonds, Bills, Notes, Judgments, Stats. &c.*

EJECTMENT of *Manors, Lands, Houses, &c.*

TRESPASS to the *Person, Wife, Servant,
Cattle, Goods, Houses, Gardens, Fishery, Close,
Church, &c.*

A L S O

(Incidentally) shewing the *Forms* of Proceedings as well
in the *Petty-Bag Office* in *Chancery*, as in *Corpora-
tion Courts, &c.*

By *W. BOHUN* of the *Middle Temple*, Esq;

The *Second Edition*, with *Additions and Amendments.*

O

In the SAVOY: P

Printed by *HENRY LINTOT*, (Assignee of *Edw. Sayer*, Esq;) for
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THE
PREFACE.

TIS the Observation of one of the wisest Authors that ever illustrated Truth, That the blazoning of our own Glory is a Species of Infamy; and surely he whose Luxuriant Pen labours by a Preface to recommend the Worth or Excellency of his Book, comes little short of him who endeavours to darken Counsel by Words without Knowledge. For as no Law, either Human or Divine, did ever allow any Man to exercise a Judicature in his own Case, so he who Usurps that Authority with regard to his own Work, will be esteemed by others as guilty both of Folly and Injustice. 'Tis certain all our Actions are liable to the

The P R E F A C E.

Censure of others, and must bear a Character correspondent to common Opinion, and not as they are in our own Eyes.

I shall therefore waive all Eulogiums on the ensuing Collection, and in this Place only in Brief inform the Reader of some few Observables, which are reducible to these Three Heads, viz. the Motives, the Method and the Matter of the Book before us.

I. The Motives were the same as formerly induced the Author to publish some other Tracts of the like Kind, while the Processes and Proceedings at Law were in Latin, and which on Occasion of the late Act, That Proceedings in Courts of Justice shall be in the English Language, prompted him to publish the English Lawyer, &c. And as the Motives of composing and publishing that Book will best appear from the Preface thereto, so be here
avers

The P R E F A C E.

avers and avows the same Motives, (viz. The Publick Benefit) to be the principal Motive of publishing This.

II. As to the Method of the Work, it will be easily seen, not only from the foregoing Title Page, wherein a general Mention is made of Declarations and Pleadings in the several Actions and Branches of Action here treated of; But a very exact Account of each Branch may be seen under the respective Divisions of the ensuing Table.

III. And as to the special Matters contained in the Book, they will be readily found by perusing the same Table, which is therefore recommended to the Reader before he enters on the Perusal of the Book itself: In which Perusal he is desired to take Notice of these Five Particulars, viz.

First, That the Precedents here collected are not only the most Modern

THE PREFACE.

dern and the best approved; but also are generally such as have undergone the strictest Examination in the several Courts of B. R. and C. B. respectively; as will appear by their having been argued and adjudged upon Special Pleas and Demurrers, wherein the most material Objections both as to Form and Substance have been answered and resolved by those respective Courts.

Secondly, That the same Precedents are for the most Part taken either from the best modern Books of Entries Extant, or selected from the most remarkable Rolls and Records as have been lately debated and adjudged in the said Courts; the Errors of the former having been carefully corrected, and the Copies of the latter duly examined; and their several Forms reduced and adapted to the present Method of Practice.

Thirdly,

The P R E F A C E.

Thirdly, *That as to those of the former Kind, the respective Pages of the Books from whence their Forms are deduced are cited in the Margin ; and as to those of the later Sort, the Term and the Number Roll when entered, is often inserted, in order to direct the Reader to the Record itself, whereby he is enabled to compare the respective Translations with their Originals.*

Fourthly, *That many marginal Notes and References, and other Explanatory Observations are inserted in the Book, in order to illustrate and explain not only the Nature of the several Titles of Actions, and the particular Declarations and Pleadings herein collected ; but also to shew the several Differences and Distinctions of Words and Phrases proper to be used in translating Latin Forms into the English Language, whereby the Reader will be enabled to select and*

The P R E F A C E

adapt such Words and Phrases as will best suit the Circumstances of his Case.

Fifthly, That in divers of the Precedents here collected the several Parts of the whole Record, (viz. the Declaration, Plea, Replication, Rejoinder, Demurrer and Joinder; Or the Issue, Award of the Venire, Postea, Continuance and Judgment) are here inserted successively, and in their natural Order. The Author in this Particular conceiving that the several Parts and Branches of Pleading would be better known and understood by shewing their Connection in the same intire Record, than if the same Record was broken and distributed into divers Parts or Branches; As the View of an organized Body in its connected Symmetry, will most surely afford a more clear and distinct Idea of the Use and Aptitude of its Parts, than when the same Body is exhibited by broken and divided Parcels.

The

The PREFACE.

The above Particulars are (with the Author's good Wishes) recommended to the Reader's candid Censure and Consideration by

W. B.

THE Success this Work has met with, makes it almost unnecessary to say any thing in Recommendation of a new Edition; but as great Pains has been taken in improving this Collection of Precedents, it may not be improper to inform the Reader wherein such Improvements consist. When the late Act for turning Law Proceedings into English took Place, the Practicers lay under great Difficulties in drawing their Pleadings, in respect to technical Terms, and even Phrases, if I may use the Word, that were used in the Latin; many Latin Words used in the Law, were so necessary, that, though they could not be defended in a grammatical Dispute, yet they

THE PREFACE.

they could not be expressed by any Circumlocution; many Phrases, and particularly such wherein Part of the Words were omitted, and the Rest supplied by an &c. were understood but by a few, even of those who had been versed in Pleading for many Years. From these Inconveniencies, our Pleadings at the first hobbled on in a lame and uncouth Manner; but Time has freed them from those Shackles, and they now walk with a freer and more comely Gait. This Edition shares in those Improvements which Time and Experience has given to our English Pleading; the Precedents herein now speak in a more elegant Style, and all dark and obscure Phrases are herein cleared up, not upon the Authority of any one single Man, but from the Examples of our most eminent Special Pleaders. This Edition also contains several late and well drawn Precedents, and particularly a choice Collection of Special Pleas, the only Thing the former Edition seemed deficient in.

A TABLE of the Declarations, Pleadings, and other Proceedings, contained in the ensuing Treatise.

Declarations and Pleadings in Case for Words.

FOR Scandalizing a Peer, reciting the Stat. 2 Ric. 2.	Page 1
For Words spoken against a Duke, not reciting the Statute,	3
For writing and publishing a Libel against a Peer,	5
By an Attorney for writing a Libel on him,	6
For Words charging the Plaintiff with Perjury,	8
For Words charging one with a Rape,	9
For slandering one's Title to an Estate,	11
For slandering a young Woman, whereby she lost her Marriage, &c. (an elegant Precedent,)	12
For saying of a Tradesman, He is a broken Fellow,	16
Wherein the Words are laid divers Ways,	17
De-	

The T A B L E.

Declarations, &c. *in Case, for Non-*
feasances, &c.

IN Assumpsit against two Partners in Trade,
on a Note given by one of them in the Name
of both, Page 19

With several Counts therein, 20

By an Indorsee against the Indorfor of a Promis-
sory Note, with several Counts, and Judg-
ment therein, 22

On a like Note against the Executors of the
Drawer, 24

By the Indorsee of an Indorsee against the
Drawer, 25

By an Indorsee against the Indorfor, 27

A second Count for so much received to the
Plaintiff's Use, 29

On a Note to the Plaintiff's Wife, and Infi-
mul Comp. with himself, 30

Note the Special Plea thereto, 32

With a Replication, Demurrer, Joinder and
Judgment, 33, 34

By Assignees of Commissioners of Bankrupts
on divers Promissory Notes, 35

And an Assumpsit and Quantum Meruit for
the Bankrupt's Goods, delivered to the De-
fendant, 38

Declarations *in Case on other Contracts*
and Writings.

BT the Bank of England, as Indorsers of a
Promissory Note against the Drawer, 40

Indebitatus Assumpsit for Money lent, 41

Against an Executrix on a Promissory Note of
her Testator's, 42

Indeb.

The TABLE.

Indebit. Assumpsit for Money lent,	Page 43
for Money laid out,	ibid.
for Money borrowed,	45
for Work and Labour,	ib.
Quantum Meruit thereon,	44
On an Inland Bill of Exchange by the Indorsee against the Drawer,	46
Indebit. Assumpsit for Money received,	47
Special Assumpsit in Consideration of two Bills of Exchange drawn by the Plaintiff, and payable to the Defendant,	48
Indebit. Assumpsit for Money laid out,	51
for Money lent,	52
See the Plea, Replication, Demurrer, &c. therein,	53
On a Bill of Exchange drawn at Lisbon and accepted here,	54
On two Bills of Exchange for Money paid at Antwerp,	57
On two Bills for Money delivered here payable at Amsterdam,	60
Averment of Tender and Refusal, Protest, Notice, &c.	62
Plea Non Assumpsit, Issue and Special Verdict,	64
The Custom of Merchants set forth,	65
Declarations, &c. in Case on other writ- ten Contracts.	

ON a Special Contract to deliver South- Sea Subscription,	67
Laid other Ways, with divers Averments and Breaches,	69
By an Executrix for not transferring Stock to her Testator,	73

The TABLE.

<i>A Declaration on a Policy for Insurance of a Ship, &c.</i>	Page 75
<i>The Form of the Policy set forth;</i>	76
<i>The several Averments and Breaches,</i>	80,
	81, &c.
<i>By the Master of a Vessel on a Contract for Freight (vide postea 339,)</i>	83
<i>On a Promise printed in the Gazette,</i>	84
<i>On a Note for Payment of Money and Interest, divers Counts,</i>	86
<i>The Record of an Action on the Case, on two Notes with six Counts,</i>	89
<i>Plea, other Things given and accepted, in Satisfaction,</i>	93
<i>See the Replication with Protestando, Demurrer, &c.</i>	94
<i>The Entry of the Judgment, Writ of Inquiry, Return, Damages, &c.</i>	95

Declarations, &c. on Assumpsits and Parol Promises expressed.

O <i>N a Parol Assumpsit for Wines sold and delivered, with Notes shewing what Evidence will support it,</i>	96
<i>On a like Promise for Delivery of Hops, &c. (laid mutually)</i>	100
<i>On a Special Agreement to deliver Barley, &c.</i>	102
<i>On a Special Agreement, with Special Damages, (well drawn)</i>	104
<i>By an Executrix and her Husband for Goods sold by the Testator,</i>	107
<i>Plea in Bar, Acceptance of four Horses, Replication, Judgment, &c.</i>	109
<i>For Wares and Merchandizes sold, &c. (three Counts) well drawn,</i>	111

The TABLE.

<i>The Demurrer thereto: But held good,</i>	Page 113
<i>On Indeb. Assumpsit for Pieces of foreign Coin, (10 Counts,)</i>	114
<i>And on Plea Non Assumpsit infra 6 annos, Judgment, Quære,</i>	117
<i>The like with 5 Counts, for Money laid out, Work done, &c.</i>	118
<i>Note, the Special Plea thereto, reciting a former Record, Verdict, Judgment, &c.</i>	120, 121
<i>A Demurrer thereto, and Joinder, &c.</i>	124
<i>Assumpsit against Husband and Wife as Executors, (4 Counts,)</i>	125
<i>Plea, the Statute of Limitations; and a Special Demurrer and Judgment,</i>	128
<i>Quantum Meruit for Work, &c. and Indeb. Assumpsit,</i>	129
<i>With a Plea in Bar, and Judgment for the Plaintiff,</i>	130
<i>For Money laid out by the Tenant, (3 Counts,)</i>	131, 132
<i>After Issue and Verdict the Form of the Postea,</i>	134
<i>A Postea on several Promises, one found for the Plaintiff, and the rest for the Defendant,</i>	135
<i>On a Promise to save harmless on entering into an Obligation,</i>	136
<i>Assumpsit for Taylor's Work, Plea infra ætat.</i>	137, 139
<i>A Special Replication, Demurrer for Cause, and Judgment,</i>	ib. 140
<i>On Infimus Comput. against Executors, and on Demurrer for Cause, Judgment for the Plaintiff,</i>	141

The T A B L E.

<i>A Declaration on a Bill filed against a Mem- ber of Parliament,</i>	Page 144
<i>Indeb. Assumpsit for Goods sold,</i>	ib.
<i>Quantum Valebat.</i>	ib.
<i> for Work and Materials,</i>	145
<i>Quantum Meruit,</i>	ib.
<i> for Money laid out,</i>	

Declarations, &c. on Promises implied.
See before Non-feasances.

F OR not repairing Fences, whereby the Beasts escaped,	173
For not repairing Fences, Plea and Issue,	175
Negligently keeping Fire, whereby his House was burnt,	177 178
Not putting a Buoy to an Anchor, whereby his Ship was bulg'd,	179
The Special Custom therein set forth,	180
By an Occupier of Land against the Rector, for not taking away his Tithe Hay, &c.	182
For not setting out the Tithes of Sylva Cædua,	184
See the Statute and Custom of Tithe-Wood set forth,	186
For not paying Small Tithes to the Vicar,	188
A Declaration on a Composition for Tithes,	190
The Record of the Case of Tenant and Gold- win, for not repairing a Partition Wall, whereby, &c.	193
Against a late by the present Mayor, for not delivering up the Insignia, &c. reciting a Mandamus, &c.	196, 197
	De-

The TABLE.

Declarations, &c. in Case for Mal-fea-
sances, or Trespasses on the Case.

F OR keeping a Dog accustomed to bite Sheep, in C. B.	Page 202
The like Declaration in B. R.	203
For shooting the Plaintiff's Dog,	204
Plea, That the Plaintiff was not qualified, &c.	205
Replication, de injuria sua propria, &c.	206
The Demurrer thereto, and Judgment for the Plaintiff Nisi,	207
For stopping up Lights, &c. and Judgment,	208
For continuing the stopping up the same (Judg- ment,)	210
A Rule of Court to stay the Postea therein,	213
For diverting a Water-Course from a Mill,	214
The like against an Attorney of C. B. by Bill,	215
Against two for stopping a Way to a Close,	217
For enticing and eloigning away the Plaintiff's Servant,	218
For binding one from taking the Tolls of his Market,	220
For erecting a Fair to the Prejudice of another Fair,	223
An Entry, &c. for stopping a Way to a Col- liery, &c.	225
After Imparlance, Not guilty pleaded, Issue and Venire,	228

The T A B L E.

Observations on the Declaration and Pleadings,	Page 229
For throwing down Inclosures, whereby, &c.	ib.
For destroying the Common with Conies, &c.	232
By a Remainder Man against a Copyholder for committing Waste,	233
See the Surrender to Use and Marriage of the Tenant shew'd,	234
Declaration in Case by him in Reversion for digging a Trench,	236
On a Warranty of Wines to be good,	240
On Warranting a Horse to be his own,	241
Against the Master of an Hoy for sinking a Boat, &c.	242
For untying a Boat whereby she was damaged,	243
By an Attorney against a Quack for an ill Cure,	244
A Record, &c. against a Common Carrier for losing Goods, &c.	247
For arresting and holding to Bail where it ought not,	250
For a malicious Arrest, &c. in the Sheriff's Court, the Cause being thence removed, and the Plaintiff Non-prof.	252
See the Habeas Corp. cum causa, and the Proceedings thereon,	253
For a Conspiracy to indict one of Barratry,	255
See the Indictment, Certiorari, and other Proceedings,	257
Against a Headborough for quartering Soldiers illegally,	259
Against a Vicar's Executors for Dilapidations,	260
For	

The TABLE.

For printing another's Copy without the Owner's Leave, Page 262

Declarations, &c. for and against Attornies, Officers of Justice, &c.

B*T an Attorney for Fees of soliciting in Chancery,* 264

Against an Attorney for Goods sold and delivered (4 Counts) 267

The Statute of Limitations pleaded thereto, Replication and Demurrer, 271

Against an Attorney for razing a Deed, whereby, &c. 273

By one Clerk of the Crown-Office against another, on a Wager, 275

Against the High Bailiff of Westminster, for False Return of a Fi. Fa. 276

See the whole previous Proceedings recited, 277

Declaration by a Church-warden against the Chancellor of a Diocese for a false Return to a Mandamus, 280

Against a Chief Bailiff of the Dutchy Liberty, on the Stat. 8 Ann. for preventing Frauds by Tenants, 283

Against a Sheriff for not arresting on Mesne Process, 288

See the Proceedings recited, and Judgment, 289

Against a Sheriff for not taking sufficient Bail in Replevin, 292

Against a Bailiff for refusing Good Bail when tendred, 294

The T A B L E:

Entry of a Declaration, Plea, &c. in the Petty-Bag Office, in an Action brought there against a Cursitor,	Page 299
The Nisi prius, Record, Venire, Distringas, &c. therein,	302
A Declaration, &c. on an Issue out of Chan- cery, by a Clerk there, against a Clerk in B. R.	304

Declarations, &c. in Actions of Account.

A ccount by Executors against the Bailiff and Receiver of the Testator,	309
Against a Bailiff, Guardian, &c.	311
By the present against the late Church-war- dens,	313
Plea in Abatement, another Warden not named,	314
Notes on Pleas in Abatement,	321

Declarations, &c. in Actions of Covenant.

A gainst an Administrator on an Indenture of Covenant,	323
On a Bill of Sale of Goods with Warranty	325
A Demurrer to the Declaration for Special Causes, &c.	327
Covenant by a Devisee against the Assignee of a Term,	328
The Lease and Devisee's Death, &c. set forth,	329
For Non-Payment of Rent, reciting the Lease, &c.	334
On a Charter-Party of Affreightment, (see before pag. 83.)	339
See the Special Covenants therein and Breach,	340, 1, 2
	As

The TABLE.

As also the Special Plea thereto, and Judgment on Demurrer,

Page 344

Declarations, &c. in Actions of Debt.

I N Debt (on an Assumpsit) for Horse-hire,	348
Observations thereon,	349
In Debt on Penal Bills (and sans Penalty) ib.	
On a Common Bond for Payment of Money,	350
On a Bond to two, with an Oyer, Demurrer and Judgment,	351
Entry of a Declaration, &c. in Debt on Bond, &c.	354
And Plea of Privilege in Abatement over-ruled,	355
The Privileges of Attornies in B. R. set forth,	356
Plea of Non est factum to a Bond, &c. ib.	
Plea of Payment at the Day, by the Statute 4 & 5 Ann.	357
Plea of Tender at the Day, and still ready to pay,	358
Debt on a Bond of Arbitration,	359
Plea, Replication, and Form of the Award,	361
Rejoinder,	364
A Demurrer, with Causes, and Judgment thereon,	ib.
Debt by the Assignees of a Bail-Bond, &c.	365
A Demurrer for Causes and Judgments, &c.	368
Debt by the Sheriff on a Bail-Bond, &c.	369
Plea that the Bond was taken colore officii,	370
a 3	Repli.

The TABLE

Replication praying the Inrolment of the Bond,	Page 372
And setting forth the Capias, &c. Demurrer for Cause and Judgment,	ibid.
Debt by an Administrator against the Obligor, Plea and Judgment,	375
Debt on Bond by Husband and Wife, Executrix of the Obligee,	377
Debt on Bond against an Executor,	378
Debt on Bond by an Attorney against the Heir and Devisees,	379
The Heir pleads Nothing by Descent,	380
The Devisees Non Deviseavit, Replication, &c.	381
The Devisees Demur, Curia Advifare, Form of the Venire,	382, 383
Debt by Dean and Chapter for Rent on a Lease, &c.	384
Debt on a Judgment, Oyer thereof,	386
Debt against the Marshal for an Escape of one in Execution,	389
Debt against a Gaoler for denying a Prisoner a Copy of his Commitment,	393
Debt on a By-Law by the Company of Stationers,	395
Without Recital of Part of their Letters Patent, &c.	ib.
Observations on the same,	400
Debt on the Statute 21 Hen. 8. of Non-Residence,	ib.
On the Statute 9 Ann. for preventing Gamings, Judgment,	405
The Statute against Usury pleaded to Debt on Bond,	ib.
The Replication, Rejoinder and Issue therein,	407
Debt on Statute of Usury	402
The	

The T A B L E

<i>The Nisi prius Record in Debt on Bond,</i>	<i>Page</i>
<i>The Award of the Venire and the Jurata, &c.</i>	408
<i>A Bill filed against an Attorney in order to</i>	409
<i>Fore-judge him,</i>	410
<i>The Rule made thereupon,</i>	411
<i>The Act for Discharge of Poor Prisoners plead-</i>	
<i>ed in Bar,</i>	ib.

Declarations, &c. in Ejectment.

T <i>HE Form of a Declaration in Ejectment,</i>	436
<i>A Declaration for a Messuage, Cottage, and</i>	
<i>Moiety of a Manor, Fair, Market, &c.</i>	437
<i>A Declaration for the Mesne Profits of Lands,</i>	439
<i>A Plea in Abatement thereto,</i>	440
<i>A Plea in Bar and in Abatement,</i>	441
<i>Nil dicit in Ejectment, and Judgment there-</i>	
<i>on,</i>	443
<i>Another Form of Entry, without a Remittit</i>	
<i>Dampna,</i>	444
<i>A Declaration in Ejectment on a double De-</i>	
<i>mise,</i>	ib.
<i>Another,</i>	446
<i>A Declaration delivered to divers Tenants to</i>	
<i>compel them to appear,</i>	449
<i>The Form of the Notice to be given thereon,</i>	450
<i>The Affidavit of serving the Declaration, and</i>	
<i>giving Notice,</i>	451
<i>The several Forms of Rules by Assent in B. R.</i>	
<i>and C. B.</i>	452, 453

The TABLE.

Rule for Judgment Nisi,	Page 455
<i>The Rule for the Master to compute the Rent and to tax the Lessor's Costs,</i>	ib.
<i>A Lease in Ejectment, where no Tenant is in Possession, with occasional Remarks,</i>	456,
	457

Declarations, &c. in Trespass.

W <i>Here it lies in Cases of Menace, Assault, Battery, Wounding and Imprisonment,</i>	459, 460
<i>Declarations for assaulting, &c. a Man's own Person in B. R. and C. B.</i>	461, 462
<i>For an Assault, Battery and False Imprisonment,</i>	463, 464, 465
<i>For assaulting, &c. an Infant, brought by his next Friend,</i>	464
<i>A Precedent of Assault, &c. with a Plea, Replication, Rejoinder, with an Issue to Part, and a Demurrer to Part,</i>	465, 466
<i>An Entry of a remarkable Judgment therein,</i>	470
<i>For assaulting the Wife,</i>	471
<i>For assaulting and lying with the Wife,</i>	472
<i>For assaulting and beating one's Servant,</i>	473
<i>For wrongfully Impounding one's Cattle,</i>	ib.
<i>For taking away a setting Dog,</i>	474
<i>For taking away one's Goods, Victuals, &c.</i>	ib.
<i>For burning his Wood, breaking his Doors, Windows, Sheds, &c.</i>	475
<i>For Trespass in Gardens, laid divers Ways,</i>	ib. 476
<i>For Trespass in Fisheries, laid divers Ways,</i>	477
<i>For</i>	ib.
<i>For</i>	For

The TABLE.

<i>For rescuing a Horse driving to Pound,</i>	Page 478
<i>For breaking a Pound, and taking thence a Mare, not paying the Damage,</i>	479
<i>For breaking his Close, and eating his Grass, &c.</i>	480
<i>For breaking his Close, and carrying away his Corn,</i>	481
<i>For breaking and entering a Church, And Parsonage-House, and taking Trees, &c.</i>	ib. 482
<i>For breaking and taking away a Seat in a Church,</i>	483
<i>Pleas in Trespass,</i>	485
<i>A brief Form of a Declaration in Trespass in C. B. (for entering into Lands, &c.) against two Defendants,</i>	486
<i>See several Matters severally pleaded thereto,</i>	ib.

Pleas, &c. now added.

P LEA, that the Plaintiffs are indebted to the Defendant, and therefore he offers to set off,	147
Plea, that the Plaintiff is indebted to the Defendant in a greater Sum, and offers to set off, and Replication,	151
Non Assumpsit, with Notice to set off a Debt,	148
Plea, that the Plaintiff recovered a Judgment for the same Matter in C. B.	149
Plea, that the Defendant paid the Money according to the Promise, and Replication,	150
Plea, that the Plaintiff is outlawed, — C. B.	152

Plea

The TABLE.

<i>Plea of Tender, Demurrer and Joinder,</i>	Page 154, 155, &c.
<i>Plea of Tender, and Replication,</i>	158, 159
<i>Non Assumpsit infra sex annos, at the Suit of an Attorney,</i>	159
<i>Plea, by Baron and Feme Administratrix, a Judgment in B. R. against the Intestate on Bond by Cognovit Actionem, a Judgment a- gainst the Defendant as Administratrix, for Goods sold and delivered to the Intestate; ano- ther Judgment on a Promissory Note of Inte- state's; a Bond entered into by Intestate, and Plene administravit præter, &c.</i>	160 to 166
<i>Plea, by an Administrator, a Judgment against Defendant on a Bond entered into by Inte- state, a Judgment obtained against the Inte- state, Plene administravit præter, &c.</i>	166 to 169
<i>Plea, that the Defendant was discharged by Vir- tue of the Act for Relief of Insolvent Debtors,</i>	169
<i>The like,</i>	170
<i>Plea, Misnomer in the Wife's Christian Name,</i>	316
<i>in the Christian Name after another Manner,</i>	ib.
<i>in the Surname,</i>	317
<i>The want of proper Addition,</i>	ib.
<i>Another Action pending in the same Court for the same Matter,</i>	318
<i>Another Action pending in C. B. for the same Matter,</i>	319
<i>Plea, that the Indentures are in the Hands of the Obligee, and that the Obligors have per- formed all Covenants,—— and Replication,</i>	414 to 419

The T A B L E.

Plea, that the Plaintiff obtained a Judgment on the same Bond,	Page 419
Plea, Performance of a Condition, and Replication,	420 to 423
Plea, that the Plaintiff is indebted to the Defendant in 21 l. for the Board of a third Person, and that only 15 l. is due on the Bond,	424
Plea, that he hath not married any Woman, nor been requested to marry the Plaintiff; Replication, that he married another Woman; Rejoinder and Demurrer,	425 to 428
Plea, that Testator on his Death was indebted to Plaintiff in 84 l. for Goods sold, and Replication,	429 to 431
Plea, that the Money was won at Play, and Replication,	431, 432
The like,	433, 434
Plea, No Award made,	434
Plea, by one Defendant that the Plaintiff challenged him to fight; by the other, that he interposed to part them,	492
Plea, that the Plaintiff and his Wife were fighting, and that the Defendant interposing, by Misfortune tore the Plaintiff's Coat,	494
Plea, by one Defendant Not guilty, by another a Justification under a Warrant of a Justice of Peace, as Assistant to a Constable,	495
Plea, that he levied a Plaint against the Plaintiff in the Sheriff's County, and caused him to be arrested, and aided and assisted the Officer therein,	497, Replication 499
Plea, that the Locus in quo, &c. is the Freehold of another, by whose Command Defendant entered,	500
Plea, that Plaintiff's House is a Tavern, and that Defendant went in to drink,	501
Plea,	

The TABLE.

Plea, that one Defendant as Bailiff of a third Person, and the other Defendants as the Bailiff's Servants entered to distrain for Rent,

Page 302

Plea, Not guilty as to Part, as to the Residue, Distress for Rent by one Defendant as Bailiff, and by the other as his Servants,

507

Plea, Trespass involuntary, and Tender of Amends,

511, Replication

513

Plea, a Justification as seised in Common with Plaintiff,

513

DECLA-

DECLARATIONS

(and PLEADINGS, &c.) in
B. R. and C. B.

In ACTIONS for WORDS.

*A Declaration for scandalizing a Peer of
the Realm (reciting the Stat. 2 R. 2.)*
Scand. Mag.

Surrey, to wit. **J**AMES Earl of B. and Duke of O. in the Kingdom of Ireland, Steward of the Household of our Lord the now King, and one of the Peers and great Men of this Kingdom of Great Britain, who prosecutes as well for our Lord the King, as for himself, complains of *W. H.* being in the Custody of the Marshal of the *Marshalsea* of our said Lord the King, before the King himself; for that to wit, That whereas in a Statute made in the Parliament of *Richard* the Second, late King of *England*, held at *Gloucester* in the second Year of his Reign, it was amongst other Things ordained and strictly prohibited, that none be so hardy to devise, speak, or tell any false News, Lyes, or other such false Things, of
B the

Scand. Mag.
by the Earl of
B. See Lilly's
Entr. 494.

Recital of the
Stat. 2. R. 2.
c. 5.

See 4 Co. 12.

Cro. El. 1.

Cro. Car. 135.

1 Jon. 194.

Dyer 155.

1 Leon. 287.

3 Bul. 225.

12 Co. 134.

2 Inst. 227.

Kelw. 26.

Declarations, &c.

Dean. Mag. the Prelates, Dukes, Earls, Barons, and other Nobles and great Men of the Realm of *England*, nor of the Chancellor, Treasurer, Clerk of the Privy Seal, Steward of the King's House, Justices of the one Bench, or of the other, and of the other great Officers of the Realm, whereof Discord or any Slander might arise within the same Realm: And that he that doth the same, shall incur and have the Pain another Time ordained thereof by the Statute of *Westminster* the first, as in the said Statute is more fully contain'd: Yet he the aforesaid *W. H.* not regarding the Statute aforesaid, on the — Day of — in the — Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at *D.* in the said County of *S.* of his Envy and Malice aforethought, in the Presence and Hearing of divers faithful Subjects of our said Lord the now King, with Intention to bring the said Earl of *B.* into Danger of the Loss of his Life, did of and concerning the said Earl of *B.* then and now one of the Peers and great Men of this Kingdom, as aforesaid, speak, utter, and with a loud Voice, publish and declare the several false, feigned, malicious, and horrible Falsities following, that is to say, The Duke of *O.* (* meaning the said *James* Earl of *B.*) is a Papist, and in the *Irish* Plot, * meaning a certain wicked Plot and Conspiracy then carrying

* *Note*; The Use of an *Innuendo* is to mark out a Thing or Person more certainly than it was before described; but it cannot make that certain which had no Certainty before; nor can it alter the Matter by enlarging or restraining the Sense of the Words. See 4 Co. 17. *March* 138, &c.

For Words.

3

rying on in *Ireland* against the now Lord the *Stan. Mag.*
King; whereas in Truth the same Earl of *B.* is not, nor ever was, a Papist, nor guilty
of any High Treason or Conspiracy against
our said Lord the now King; whereby great
Scandal and Discord within this Kingdom
did then and there arise, and may hereafter
arise to the said Earl of *B.* in Contempt of
our said Lord the now King, and against the
Form of the said Statute, to the Damage of
him the said *James* Earl of *B.* one Thousand
Pounds; and thereupon, as well for the said
Lord the now King as for himself, he brings
his Suit, &c. [See the Plea hereto *post. Tit.*
Abatement.]

*Another for Words spoken against a Duke
(not reciting the Statute.)*


Middlesex, to wit. **T**HE most noble C. Duke of *R.* one of *Scandal of a Duke. See*
the Peers and great Men of this Kingdom of *Inst. Leg. 319.*
Great Britain, who prosecutes, &c. (*as before* 320.
to) That whereas the same C. Duke of *R.* *Rast. Entr.*
was (on such a Day and Year) and long be- 13.
fore, and ever since hitherto hath continued *Lilly 123.*
to be one of the Peers and great Men of this
Kingdom, and hath had, and yet hath a
Vote and Seat in the Parliament of our said
Lord the now King, as one of the Peers of
this Realm: Yet he, the aforesaid *W. H.*
contriving, and maliciously intending against
the Form of the Statute in such Case lately
made and provided, to stir up great Scandal
of the aforesaid Duke, whereby Discord and
Strife may arise between the same Duke and

Scan. Mag. other Peers and great Men of this Realm,
 on the aforesaid Day of in the
 Year of the Lord One Thousand, &c. afore-
 said, at B. in the County aforesaid, having
 Discourse with one F. G. of and concerning
 the said Duke, did then and there, in the
 Presence and Hearing of divers good and
 faithful Subjects of our said Lord the now
 King, falsely, maliciously and scandalously,
 speak, utter, publish and declare these false,
 feign'd, scandalous, and opprobrious Words
 following, that is to say, *The Duke of R. is
 a base Man, and will not pay his Debts, &c.*
 By Reason of which speaking, uttering, pub-
 lishing, and declaring of the said Words, he
 the said Duke sustained, suffered and incur-
 red great Loss and Prejudice in his Honour,
 Fame and Estimation, among the Peers and
 great Men aforesaid, and also the Displea-
 sure of our said Lord the now King toward
 the said Duke; and likewise divers great Dis-
 cords and Scandals have arisen, and are dai-
 ly more and more like to arise within this
 Realm, between the said Duke and divers
 other Peers and great Men, and other good
 Subjects of the said Lord the King, to the
 great Disturbance of the Tranquillity of this
 Kingdom, in Contempt of our said Lord the
 now King, to the great Scandal and Defa-
 mation of the said Duke, and against the
 Form of the aforesaid Statute, to the Da-
 mage of the said Duke, who sues as well for
 the said Lord the now King, as for himself,
 2000*l.* And thereupon the same Duke, as
 well for the said Lord the now King as for
 himself, brings this Suit, &c.

*A Declaration for Writing and Publishing
a Libel against a Peer.*

Middlesex, to wit. **H.** Lord *E.* Baron of *F.* one of the Peers and great Men of this Kingdom of *Great Britain*, who prosecutes, &c. (*as above*) complains of *G. D.* being in the Custody of the Marshal, &c. (reciting the Statute as above) yet he, the aforesaid *G. D.* not regarding the aforesaid Statute, did (such a Day and Year) at *Westminster* in the County of *Middlesex* aforesaid, by a previous Conspiracy had the same Day and Year with one *A. B.* write and publish a certain false, feigned, and scandalous Writing, called *A true History*, &c. (and so set forth the Title of the Libel) of and concerning the same *H. Lord E.* charging him the said *H. Lord E.* then and from thence hitherto continuing to be one of the Peers and great Men of this Kingdom, and to have a Vote and Seat in the Parliament of this Kingdom of *Great Britain*, to have perpetrated the Crime of Subornation of Perjury; which said Libel is written in the Words following, *A True History*, &c. (reciting the Libel): By Pre- tence of which said Libel so written and published, divers false Rumours and Scandals did arise, and were had, and the same *H. Lord E.* fell under great Displeasure and Distrust of our said Lord the now King, and divers Peers and great Men of this Kingdom; so that the same *H. Lord E.* lost the Favor, Grace and good Opinion, which our said Lord the now King, and divers Peers and

*Libelling a
Peer. See 1
Sand. 120.
Br. Meth. 3.
2 Bro. 22.
Brb. Red. 72.*

Libels.


See the 1st
 Precedent ante
 in B. R.

great Men of this Kingdom, had before that Time had towards him the said *H. Lord E.* And the same *H. Lord E.* thereby also fell into great Danger of incurring the Pains and Penalties of the Laws of this Kingdom, made and provided against Suborners of Perjury; And great Scandal and Discord hath arisen, and more is likely to arise in this Kingdom among divers of the Peers and great Men thereof, to the great Disturbance of the publick Tranquillity, &c. of the same (as above.)

A Declaration by an Attorney against one for writing a Libel on him.

Libelling an
 Attorney of
 B. R. See
 Inst. Leg. 350.

London, to wit. **A.** *S.* Gentleman, one of the Attorneys of the Court of the Lord the King, before the King himself, according to the Liberties and Privileges for such Attorneys, and other Ministers of the same Court, from the Time to the contrary whereof the Memory of Man is not, used and approved in the same, being present here in Court in his proper Person, complains of *M. H.* being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself; for that to wit, That whereas he the said *A. S.* is a good and faithful Subject of our said Lord the now King, and from the Time of his Birth hitherto hath carried and behaved himself as a good and faithful Subject of our said Lord the King, and of his Predecessors, Kings and Queens of this Realm, and hath been always known, esteemed, and reputed amongst all the faithful Subjects of our said Lord the
 now

now King, to whom the said *A.* was known, to be of good Name, Fame, and Reputation, without any Spot or Stain of the Crime of being a Corrupter or Seducer of false Witnesses: And also, *whereas* the same *A.* hath been for many Years now last past, and still is an Attorney of the said Court of our said Lord the King now here, before the King himself, and hath also been employed as a Solicitor of Causes and Suits, as well in that as in other Courts of Justice within this Kingdom of *Great Britain*, without any Guilt of embracing, seducing, or Maintenance of Witnesses to swear falsely, and hath always born and behaved himself well and honestly in his Business as an Attorney and Solicitor, whereby the same *A.* obtained a good Name, Fame, and Esteem among his Clients, and by reason thereof was accustomed to acquire great Gains and Profit for the Sustenance of himself and his Family: And also *whereas* the said *M.* (the Defendant) and *E.* his Wife heretofore, to wit, in the Term of *St. Michael* in — Year of the Reign of our said Lord the now King, had exhibited into the Court of our said Lord the now King, of his Chancery, then being at *Westminster* aforesaid, a certain Bill of Complaint against one *J. B.* and upon the same Bill it was so far proceeded in the same Court of Chancery, That divers Witnesses, to wit, *S. J.* and the aforesaid *A. S.* the now Plaintiff, with divers others, were produced and examin'd on the Behalf of the aforesaid *M.* yet he, the aforesaid *M.* not ignorant of the Premises, but contriving and intending to hurt and destroy the good Name and Fame of him *A.* and to deprive him of

Recital of
Proceedings in
Chancery.

Subornation.

Perjury.

the Means of sustaining himself and Family, did on the — Day of, &c. at, &c. falsely and of his mere Malice, devise, compose and write in a certain Paper of and concerning the aforesaid *A.* and the aforesaid *S.* respectively, on occasion of their being produced and examined in the said Cause as aforesaid, these false and scandalous Words following (*recite the Words*): And afterwards, to wit, on the same Day and Year, at, &c. aforesaid, the said Paper so containing in itself the false, malicious and scandalous Words aforesaid, he the said *M.* did publish and declare, by reason of which said contriving, devising, composing, writing and publishing of which said Paper, he the said *A.* lost his good Name, Fame and Esteem among his Clients, and many of his said Clients deserted him, whereby he is deprived of the Means of sustaining himself and Family, to his Damage of 1000*l.* and thereupon he brings this Suit, &c.

A Declaration for Words charging the Plaintiff with Perjury.

In C. B. for a
Charge of Per-
jury. Inst.
Leg. 339.
Clift 104.

A. *B.* was attached to answer to *C. D.* of a Plea of Trespas upon the Case; and whereupon the same *C. D.* by *G. F.* his Attorney, complains, That whereas the same *C. D.* is a good and faithful Subject, &c. and free from the Crime of Perjury, &c. (as before to) And whereas the same *C. D.* was (such a Day and Year of the King) summoned to be before *R. S.* Knight, then Mayor of the Town of *L.* to testify and say the Truth of

of and concerning a certain Matter then and there depending, before the said Mayor to be heard; and the aforesaid C. being then and there ready to be sworn upon the Holy Gospels of God, to say the Truth therein before the said Mayor: Yet the aforesaid A. being not ignorant of the Premisses, of his own mere Malice and wicked Design, contriving to scandalize and prejudice the said C. in his good Name, Fame and Reputation; and also to bring the said C. into Trouble, Vexation and Discredit, did at L. in the County aforesaid, in the Presence and Hearing of the said Mayor and of divers other good Subjects of our said Lord the now King, speak, utter, publish, and declare these Words following, that is to say, *Sir* (meaning the aforesaid R. S. then Mayor of the said Town of L.) *don't give him the Book, for he* (meaning him the said C. D.) *is a perjured Fellow, and that I will prove.* By Reason of which said false, feigned, and scandalous Words, the said C. was not only grievously injured in his said good Name, Fame and Reputation, but is also very much prejudiced in divers of his honest and lawful Employments, to the Damage of him C. &c. See a Precedent for charging an Attorney with Perjury, &c. *Clift's Entries* 104.

A Declaration for Words charging one with Rape.

In B. R. for Words of Rape.
See 2 Bro. 18.
2 Cro. 19.
Hans. 57.
1 Co. 101.
589, &c.
now Godb. 287.

Middlesex, to wit.

A. B. of &c. complains of J. S. in Custody (&c. ante) That whereas the aforesaid A. is

Declarations, &c.

now, and from the Time of his Birth hitherto hath been a good, true, chaste and honest Subject of our Lord the now King, and his Predecessors Kings and Queens of this Realm, and wholly uncorrupted, unspotted and unstained with any filthy, unchaste or debauch'd Crime of Life, and hath been always of good Name, Fame and Reputation, by Reason and Means whereof he deservedly acquired the good Opinion, Favor and Good-will of divers eminent and worthy Persons, &c. yet the foresaid *J. S.* being not ignorant of the Premisses but greatly envying the Happiness and good Estate of him *A.* and contriving and maliciously intending not only totally to blacken and prejudice him *A.* in his good Name, Fame and Reputation, but also to bring him into Danger of the Loss of his Life, did on the — Day, &c. at *S.* in the County of *M.* aforesaid, in the Presence and Hearing of many good Subjects of our said Lord the now King, openly and publickly, speak, publish and declare these Words following, to wit, *Thou* (meaning the now Plaintiff) *didst ravish M. W.* (meaning *M.* the Daughter of one *J. W.*) *against her Will* (meaning against the Will of the said *M. W.*) *and deserv'st to be bang'd for it.* By Reason of the said speaking and publishing of which said false and scandalous Words he the same *A.* is not only greatly hurt in his good Name and Fame, but is very much prejudiced and hindered in transacting divers of his honest and lawful Employments, to the Damage of him the said *A.* of 500*l.* &c.

A De-

A Declaration for Slandering one's Title to an Estate.

C. D. of *Ec.* was *Ec.* to answer *A. B.* of *Ec.* In C. B.
 That whereas the same *A.* was law- For saying the
 fully, peaceably and quietly seised in his De- Plaintiff had
 mesne as of Fee-simple, *Ec.* of and in the no Right to a
 Manor of *M.* with its Rights, Members, and Manor, when
 Appurtenances; and being so seised, he the about to let it,
 same *A.* afterwards, to wit, (such a Day and which occasi-
 Year) had intended and proposed to Lease on'd a Com-
 the said Manor and Premisses to any Person mission of In-
 or Persons that should be willing to take the quiry whether
 same on a Lease for a certain Number of Years it was not con-
 to be agreed on between them; yet the afore- cealed, &c.
 said *C. D.* well knowing the Premisses, but See Rast. 494,
 contriving and maliciously intending to draw 594.
 the said *A.*'s Right and Title to the said Ma- Inst. Leg.
 nor into Scandal and Infamy, and to hinder 349.
 and obstruct the said *A.* from letting or leas-
 ing the said Manor and Premisses to any Per-
 son, according as he the said *A.* had pur-
 posed and intended; and purposing to intitle
 our Lord the now King to the same Manor,
 as a Manor concealed, and of Right belong-
 ing to our said Lord the now King in Right
 of his Crown of *Great Britain*, did on (such a
 Day and Year) at *M.* in the Presence and
 Hearing of one *R. S.* Gent. and of divers other
 Subjects of our Lord the now King (who are
 unknown to the said *A.*) affirm and publish,
 That the aforesaid *A. B.* had no Right or Ti-
 tle to the Manor of *M.* aforesaid, whereby the
 aforesaid *R. S.* giving Credit to the afore-
 said Assertion and Declaration of the said *C.*
 did

Estates.

Commission.

did afterwards (*such a Day, &c.*) prosecute out of the Court of Chancery of our said Lord the now King, certain Letters Patent under the Great Seal of our said Lord the now King, directed to one *T. W.* Knt. and certain others, commissioning to inquire by the Oath of certain good and lawful Men of the said County of *S.* whether the *Right* or *Title* of the said Manor was concealed from our said Lord the King or not. By Reason of which said Affirmation and Publication the aforesaid *A.* could not lett or lease the said Manor, with the Appurtenances, to any Person or Persons whatsoever: And also he the said *A.* was forced to lay out and expend divers considerable Sums of Money in and about the Defence of his Right and Title to the said Manor and Appurtenances: By Reason whereof he the same *A.* hath been very much vexed, disquieted and injured; whereupon he saith he is the worse, and hath Damages to 150 *l.* and thereupon he brings this Suit, &c. See *Co. Entr.* 29, 30, 34, 35. *Hern* 111, 141. 1 *Brownl.* 70. *Rdb. Entr.* 14. 2 *Mod. Intr.* 25. *Upper Bench Precedents* 116, 235, &c.

For Slander of a Woman whereby she lost her Marriage, &c.

In B. R.
Slander, Loss
of Marriage.
See Lilly's
Ent. 61, &c.
an elegant
Precedent.

Warwick, to wit. **D.** *B.* Spinster, complains of *W. W.* Clerk, and *C.* his Wife, being in the Custody of the Marshal, &c. for that to wit, That whereas the aforesaid *D.* is a good, true, pious, chaste and honest Subject of our Lord the

For Scandal.

13

Inconti-
nency.

the now King, and as such a good, true, pious, chaste and honest Subject of our said Lord the now King hath behaved and carried herself, and continued from the Time of her Birth hitherto, and been accounted, known, and reputed to be of good Name, Fame, Condition, Conversation, Life and Behavior among her Kinsfolks, Friends, and Neighbours, and other Subjects of our said Lord the now King, and through the whole Course of her Life past hath been wholly free, innocent and clear from any Whoredom, Adultery, Fornication, or Incontinence, and led and continued the Life of a Virgin, always desiring, embracing, and exercising all Kind of Virtue, Modesty, Sincerity, Probity and Honesty: By Means whereof, she the said *D.* had not only deservedly acquired and obtained great Favour and good Will among her Parents, Kinsfolks, Friends and Neighbours, and other faithful and creditable Subjects of our said Lord the now King, but also divers Persons of honorable and great Estate and Reputation did earnestly desire the Friendship and Company of the said *D.* by Reason of her pious, pure, immaculate, and uncorrupt Conversation: And whereas *R. B.* Widow, the Mother of her the said *D.* by Reason of her the said *D.*'s pure, chaste and unspotted Life intended to give, and was then about to give freely of her own proper Monies to the foresaid *D.* the Sum of 1500 *l.* of lawful Money of *Great Britain*, for her the said *D.*'s Preferment: And whereas *J. B.* the Brother of the foresaid *D.* a Man of a great Estate, did by Reason of her the said *D.*'s pure, immaculate and uncorrupt Conversation,

Special Damage.

Inconti-
nency.

on, bear so great Favor, Love and Good-
will towards her the said *D.* that he the said
J. did intend freely to give, and was at that
Time about to give to the said *D.* the further
Sum of 1000*l.* of like lawful Money for the
present Support, Preferment and Augmenta-
tion of the Portion of her the foresaid *D.*
Yet the foresaid *C.* [*i. e.* the Wife] being not
ignorant of the Premisses, but maliciously en-
vyng the happy State and Condition of her
the said *D.* and contriving and intending not
only to scandalize and defame the said *D.* in
her good Name, Fame, Credit and Reputa-
tion, but also totally to hinder and obstruct
the said good Intentions of the said *R.* her
Mother and *J.* her Brother towards her, and
to bring her the said *D.* into the utmost Dis-
credit and Hatred of them the said *R.* and *J.*
and of all others her Kinsfolks, Friends and
Neighbours, and also intending to deprive
and obstruct the said *D.* from all Preferment,
and from all Gifts, Donations, Legacies and
Bequests of her Parents, Kinsfolks and Friends,
on the first Day of *June* in the ——— Year,
16*36.* at *C.* in the County aforesaid, did, in the
Presence and Hearing of divers faithful and
creditable Subjects of our said Lord the now
King, speak, utter, assert, and with a loud
Voice pronounce and publish of and con-
cerning the same *D.* these false, feigned,
scandalous and opprobrious Words following,
to wit, *Mistress Bracebridge has had a Child*
by Master Sacheverel (meaning *H. S.* of *D.*
16*36.*) *and the Child is kept at* (meaning the
Town of *T.* in the County of *W.*) by Reason
of speaking and publishing of which said
false, feigned, scandalous Words, the said
D.

For Scandal.

15

Inconti-
nency.

D. not only fell into great Infamy and Scandal of the mischievous and wicked Crime of Whoredom, Fornication and Incontinency among many venerable and creditable Persons, by whom the same *D.* was before had in great Honour, Credit and Esteem, but also all other Persons, who before the speaking of the said false, feigned, scandalous and opprobrious Words, used greatly to desire the Company and Society of her the said *D.* did thereupon withdraw, and do since daily more and more withdraw themselves from the Company and Society of the said *D.* as from the Company of an unchaste and whorish Woman; and also by Reason of the speaking of the said false, feign'd, scandalous and opprobrious Words aforesaid, the foresaid *R. B.* the Mother of the said *D.* and the foresaid *J. B.* the Brother of the said *D.* have respectively wholly refused, and do still refuse to give to the said *D.* the said 1500*l.* or the said 1000*l.* so intended to be given to her the said *D.* as aforesaid, and also by Reason of speaking the Words aforesaid, she the said *D.* hath wholly lost the Love, Esteem and Good-will both of the said *R.* her Mother, and of the said *J.* her Brother, and of all her other Friends and Acquaintance, and also her Preferment aforesaid; whereupon the same *D.* saith, That she is the Injured, and hath Damage to, &c.

For

Bankrupt.

cp.

For saying to a Tradesman, you are a broken Fellow.

In C. B. calling a Tradesman Bankrupt. Declaration in C. B. See Parlt. 12. Lilly's Entr. 73, &c.

Surrey, to wit. **T**HO. Pilkington, late of Southwark in the County of S. Knight, was attached to answer to *E. Bolsworth* of a Plea of Trespass on the Case, and whereupon the said *E.* by *T. R.* his Attorney complains, That whereas the same *E.* is a good, true, and faithful Subject of our Lord the now King, and now exercises, and for divers Years last past hath exercised the Trade, Art, or Mystery of a Perfumer, and hath always behaved himself as a faithful Buyer and Seller, in buying and selling in the same Trade, and from the Time of his Birth hath hitherto behaved himself as a good, true and faithful Subject of our said Lord the now King, and during the whole Time aforesaid hath been held and reputed to be of good Name, Fame and Estimation by many good Subjects of our said Lord the now King, and for many Years now last past hath lawfully used and exercised, and doth still use and exercise the said Trade, Art, or Mystery of a Perfumer by Way of Merchandizing in buying and selling, and lawfully trading with many Subjects of our said Lord the now King, and during that whole Time hath well and faithfully kept, performed and fulfilled his Faith, Contracts and Promises in Things and Transactions touching his Art, Trade or Mystery aforesaid; and also in the true and faithful Payment of his Debts at all Times, without any Appearance of Breaking,

ing, and by Reason thereof had obtained and enjoy'd the Credit and good Opinion of divers good Subjects of our said Lord the now King, whereby he the same *E.* did daily and honestly gain and acquire great Gain and Profit for maintaining of himself and Family, and other lawful Purposes: Yet the foresaid *Thomas* being not ignorant of the Premises, but of his own meer and wicked Malice contriving and endeavouring to blacken and prejudice the good Name, Fame, State and Estimation of him the said *E.* and to draw and bring him the same *E.* into a Discredit with the Subjects of our said Lord the now King, and to bring him into Scandal, Disgrace and Infamy, so that the said Subjects of our said Lord the now King should not trade or deal, or have any thing to do with the said *E.* and also, That they should esteem the said *E.* to be a Bankrupt, did on the — Day, &c. at &c. of, to and concerning the said *E.* in the Presence and Hearing of divers faithful Subjects of our said Lord the now King, falsely and maliciously speak, utter, &c. *ut antea*, *You* (meaning the aforesaid *E.*) *are a pitiful broken Fellow, and are not able to pay your Debts* (meaning the Debts of the said *E.*) and also whereas the same *T.* afterwards, to wit, on the same Day and Year, at, &c. aforesaid, of his further Malice and Envy against him *E.* before that Time had and conceived, did also of, to and concerning the said *E.* falsely and maliciously speak, utter, &c. these other false, feigned, scandalous and opprobrious Words following: *You* (meaning the aforesaid *E.*) *are a pitiful broken Fellow, go Home and pay your Debts* (meaning the Debts

Note; the Words are laid three Ways in Order to make them agree with the Evidence to be given at the Trial.

Bankrupt-
cy.

of the said *E.*) and also whereas the same *T. P.* afterwards, &c. (as before, laying a third Set of Words thus) *you are a pitiful broken Fellow, and cannot pay your Debts*, by Reason of speaking and publishing which said false, feigned and scandalous Words he the said *E.* is not only very much prejudiced and damnified in his Credit, Character, and good Fame, but is also greatly damaged and injured in transacting his Affairs, and in his Trading and Credit with divers honest and worthy Persons with whom he formerly used to Trade in buying and selling his Goods, Wares and Merchandizes; and for that Cause many Subjects of the Lord the now King, have wholly refused, and do still refuse to have any Dealings or Commerce with him the said *E.* whereupon he saith, That he is injured, and hath Damage to the Value of 1000*l.* And thereupon he brings this Suit, &c.

Note; In this Case the Plaintiff recover'd a Verdict for 800*l.* Damages; upon which a Writ of Error was brought in Parliament, and the Judgment there affirmed. Whereupon Sir *Tho. Pilkington*, the Defendant, paid the Damages, &c.

And with this I shall conclude *Declarations* on the Case for *Words*, and proceed to such as concern *Facts*, viz.

Of Non-feasances in Assumpsits or Promises expressed or implied.

Declarations on the Case concerning Acts of Non-feasance and Male-feasance or Mis-feasance: And first, of Non-feasances, i. e. the not doing what one has promised or undertaken (on a good Consideration) to do: And this respects most of those Actions that usually fall under the Denominations of *Assumpsits*,

In Assumpsits.

19

sumpsits, Indebitatus Assumpsits, Quantum Valebats, Quantum Meruits, Quantum erogassets, Mutuatus's, and the like, which, as they concern Trade in General, and are consequently of much more frequent Use than any other Actions in the Law; so I shall herein be more particular and distinct than on any other Head that falls within this Collection.

By Notes.

Declarations upon *Assumpsits* or Promises; are either upon Promises expressed, or Promises imply'd. Express Promises are either in Writing, or by Parol. In Writing, are either on Promissory Notes, Bills of Exchange, written Contracts, or Articles sign'd, of which some Precedents here follow:

A Declaration on Assumpsit against two Partners in Trade, on a Note given by one of them on Behalf of himself and the other:

London, to wit. **T**. B. late of London, Merchant, and R. S. late of London, Merchant, were attached to answer to S. W. of a Plea of Trespass on the Case; and whereupon the said S. by A. B. his Attorney, complains, That whereas on the ninth Day of *January* in the Year of the Lord 1717, and before and after they the said T. and R. were Partners and joint Dealers in Trade, jointly using and exercising their Trade and Commerce together in Partnership, to wit, at London, in the Parish of Saint Mary le Bowe in the Ward of Cheap: And they being so Partners and joint Dealers in

in C. B. Assumpsit against two Partners on a Note by one; &c. See Lilly's Entr. 48. 1 Count.

C 2 Trade

Declarations, &c.

By Notes. Trade as aforesaid, he the aforesaid *T.* after the first Day of *May* in the Year of the Lord 1705, to wit, on the ninth Day of *January* in the Year of the Lord 1717, at *London* aforesaid, in the Parish and Ward aforesaid, did make a Note in Writing, bearing Date the same Day and Year, subscribed with his own proper Hand, and thereby for himself and the said *R. S.* promised to pay to the aforesaid *S. W.* 200*l.* in one Month after the Date of the same Note, for Value received of Mr. *David White*, by Reason whereof, and by Force of the Statute in such Case made and provided, they the aforesaid *T.* and *R.* became bound to pay to the aforesaid *S. W.* the aforesaid 200*l.* And being so bound, they the aforesaid *T.* and *R.* on the aforesaid ninth Day of *January* in the Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof undertook, and to the said *S. W.* then and there faithfully promised, That they the aforesaid *T.* and *R.* would well and faithfully pay and satisfy the said 200*l.* to the aforesaid *S. W.* according to the Tenor of the aforesaid Note: And also whereas the aforesaid *T.* and *R.* being Joint Dealers and Partners aforesaid, after the aforesaid first Day of *May* in the said Year of the Lord 1705, to wit, on the aforesaid ninth Day of *January* in the said Year of the Lord 1717, at *London* aforesaid, in the Parish and Ward aforesaid, according to the Custom (Usage) of Merchants, made their certain Note in Writing, bearing Date the same Day and Year; and thereby promised to pay to the aforesaid *S. W.* other 200*l.* within one Month after the Date of the same Note,

& Count.

Note, for Value received of Mr. *David White*: By Reason whereof, and by Force of the Statute in such Case made and provided, they, the aforesaid *T.* and *R.* became chargeable to pay to the aforesaid *S. W.* the aforesaid 200*l.* last mentioned: And being so chargeable, they the aforesaid *T.* and *R.* on the aforesaid ninth Day of *January* in the said Year of the Lord 1717, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof undertook, and to the same *S.* then and there faithfully promised, That they the aforesaid *T.* and *R.* would well and faithfully pay and content the same 200*l.* to the aforesaid *S.* according to the Tenor of the same Note: Yet they the aforesaid *T.* and *R.* not regarding their said several Promises so made to the said *S.* as aforesaid, but contriving and intending in this Behalf to deceive and defraud the said *S.* have not, nor hath either of them paid the said several Sums of Money, or any Part thereof, to the said *S.* (although afterwards, to wit, on the twentieth Day of *February* in the said Year of our Lord 1717, and often afterwards at *London* aforesaid, in the Parish and Ward aforesaid, they were thereunto required by the said *S.*) but they have hitherto refused, and still do refuse to pay him the same, to the Damage of the said *S.* of 300*l.* And thereupon he brings this Suit, &c.

By Notes.

*Declaration on a Promissory Note, by the
Indorsee against the Drawer.*

In C. B. by
an Indorsee
against the
Drawer. Vid.
Lib. Judic.

1st Count.

London, to wit, J. G. late of *London*, Merchant, was attached to answer to *L. K.* of a Plea of Trespass on the Case; and whereupon the said *L.* by *R. H.* his Attorney, complains, That whereas the aforesaid *J.* after the first Day of *May* in the Year of the Lord 1705, to wit, the 26th Day of *January* in the Year of our Lord 1714, at *London* aforesaid, to wit, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, did make his certain Note in Writing, commonly call'd a Promissory Note, with the proper Hand of the said *J.* thereto subscribed, bearing Date the Day and Year last aforesaid, and did then and there deliver the said Note to one *F. L.* by which said Note he the aforesaid *J. G.* promised to pay to the said *F. L.* by the Name of *Mr. F. L.* or to his Order, four Months after Date of the same Note, the Sum of 96*l.* for Value received by the aforesaid *J. G.* And also whereas the aforesaid *F. L.* afterwards and before the Time of the Payment of the aforesaid Sum of Money, to wit, on the 1st Day of *March* in the Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, by an Indorsement in and upon the same Note, subscribed with the proper Hand of him *F.* he the said *F.* order'd the same Sum of Money to be paid to the aforesaid *L. K.* or to his Orer, for Value received: And afterwards, to wit, on the 10th Day of *March* in the Year last aforesaid,

said, at *London* aforesaid, in the Parish and Ward aforesaid, the same *J.* had Notice of the Indorsement aforesaid: And by Reason thereof, and also by Force of the Statute in such Case lately made and provided, the same *J.* became chargeable to pay to the said *L.* the Sum of Money aforesaid, according to the Tenor of the Note aforesaid: And in Consideration thereof the same *J.* afterwards, to wit, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the same *L.* then and there faithfully promised to pay to the aforesaid *L.* the aforesaid 96*l.* according to the Tenor of the Note aforesaid. And also, ^{2d Count.} whereas the aforesaid *J.* afterwards, to wit, the 1st Day of *June* in the Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *L.* in other 96*l.* of lawful Money of *Great Britain*, for the like Sum of Money by the same *L.* to the said *J.* before that Time advanced and lent, and being so thereupon indebted, he the aforesaid *J.* in Consideration thereof, afterwards, to wit, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the said *L.* then and there faithfully promised, That he the aforesaid *J.* would well and faithfully pay and content unto the said *L.* the aforesaid 96*l.* when he should be afterwards thereunto required: Yet the aforesaid *J.* in no wise regarding his several Promises and Assumption aforesaid, so made to the said *L.* in Form as aforesaid, but contriving and fraudulently intending him the said *L.* in this Particular, craftily and subtilly to deceive and defraud,

Declarations, &c.

By Notes.

defraud, hath not paid the said several Sums, or any Penny thereof, to the L. nor hath in any Manner contented him for the same (altho' to do this the aforesaid J. was afterwards, to wit, the Day and Year last aforesaid, and often afterwards at London aforesaid, in the Parish and Ward aforesaid, required by the said L.) but he hath altogether refused, and still doth refuse to pay him the same, to the Damage of him L. 100 l. And thereupon he brings Suit, &c.

Note; On a Demurrer to this Declaration Judgment was for the Plaintiff.

A Declaration in Assumpsit by the Indorsees of a Promissory Note, against the Executors of the Drawer.

In B. R. on
a Promissory
Note by the
Indorsees a-
gainst the Exe-
cutors of the
Drawer.
Lilly 45.

Middlesex, to wit. **C** W. and G. C. com-
plain of R. L. Wi-
dow, T. L. Gent. J. L. and M. T. Widow,
Executors of the Testament and Last Will of
R. L. deceased, in Custody of the Marshal of
the Marshalsea of the Court of the Lord the
King, before the King himself; for that to
wit, That whereas the aforesaid R. L. de-
ceased, did in his Life-time after the first Day
of May in the Year of our Lord 1705, to
wit, the 18th Day of May in the Year of
our Lord 1718, at Westminster in the said
County of Middlesex, make his certain Note
in Writing call'd a Promissory Note, sub-
scribed with his proper Hand, bearing Date
the same Day and Year; and by the same
Note promised to pay to one E. M. or Or-
der,

der, 500*l.* in Six Months after the Date of the same Note, for Value received: And that Sum of Money being unpaid to the said *E. M.* the same *E.* afterwards, to wit, the 30th Day of *April* in the Year of our Lord 1718 above-said, at *Westminster* aforesaid, indorsed that Note with his proper Hand thereto subscribed, and by that Indorsement he the said *E.* appointed the same Sum of Money to be paid to the said *G. W.* and *G. C.* whereof the aforesaid *R.* in his Life-time had Notice: And by Reason thereof, and also by Force of the Statute in such Case made and provided, the same *R.* in his Life-time became liable to pay to the same *G. W.* and *G. C.* the said Sum of Money, according to the Tenor of the said Note: And in Consideration of the Premises the same *R.* in his Life-time undertook, and to the said *G. W.* and *G. C.* then and there faithfully promised to pay to them that Sum of Money: Yet, &c.

By Notes.

Indorsement.

A Declaration by the Indorsee of an Indorsee of a Promissory Note against the Drawer.

London, to wit, *J. O.* late of *London*, Scrivener, was attached to answer to *R. M.* and *W. D.* of a Plea of Trespass on the Case; and whereupon they the *R. M.* and *W. D.* by *G. R.* their Attorney, complain, Wherefore whereas the aforesaid *J.* after the 1st Day of *May* in the Year of our Lord 1705, to wit, on the eleventh Day of *June* in the Year of our Lord 1708, at *London*

In C. B. by
Indorsee of an
Indorsee, &c.
against the
Drawer.
Lilly 73.

By Notes. *London* aforesaid, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, made his certain Note in Writing with his own proper Hand thereto subscribed, call'd a Promissory Note, bearing Date the same Day and Year last aforesaid, and thereby promised to pay to one Master *R. F.* or Order, 100 *l.* upon the 1st Day of *October* then next following, for the like Value received; and the aforesaid 100 *l.* being unpaid, he the aforesaid *R.* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, indorsed that Note with his proper Hand thereto subscribed, and thereby appointed the Contents of the said Note to be paid to one *W. B.* or his Order, Value received: And the said 100 *l.* being still unpaid, he the said *W. B.* afterwards, to wit, the same Day and Year last aforesaid at *L.* aforesaid, in the Parish and Ward aforesaid, indorsed that Note with his proper Hand thereto subscribed, and thereby appointed the Contents of the said Note to be paid to the said *Robert Man* and *W. Day*, or their Order for Value received; whereof the said *J. Oades* afterwards, to wit, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, had Notice: By Reason of which said Premisses, and also by Force of the Statute in such Case lately made and provided, he the said *J. O.* was and became liable to pay to the said *R. M.* and *W. D.* the same Sum of Money, according to the Tenor of the said Note: And being so thereupon liable, he the said *J.* afterwards, to wit, on the same Day and Year last aforesaid, in Consideration thereof undertook, and

1st Indorsement.

2d Indorsement.

to

On Promises.

27

to the said R. M. and W. D. then and there *By Notes,*
faithfully promised to pay to them the same
Sum of Money, according to the Tenor of
the said Note: Yet the same J. nor regard-
ing his Promise and Undertaking aforesaid,
but contriving and fraudulently intending
craftily and subtilly to deceive and defraud
them the said R. M. and W. D. in this Par-
ticular, hath not paid the aforesaid 100*l.* nor
any Penny thereof, to the said R. M. and W. D.
or either of them, (although he was thereun-
to required by the said R. M. and W. D. af-
terwards, to wit, on the first Day of *October*
in the seventh Year of the Reign of our So-
vereign Lady the now Queen, and often af-
terwards at *London* aforesaid, in the Parish
and Ward aforesaid, he was thereunto re-
quired by the said R. M. and W. D.) but hi-
therto to pay them the same he hath altoge-
ther refused, and still doth refuse, to the Da-
mage of them the said R. M. and W. D. 130*l.*
And thereupon they bring this Suit, &c.

Note; The Note in this Declaration was
thus; *I promise to pay to Mr. Richard Fowke,*
*or Order, 100*l.* upon the 1st Day of October*
1718. Witness my Hand, James Oades; and
indorsed thus, R. Fowke, and indorsed again,
W. Bowcock.

A Declaration by the Indorsee against the Drawee of a Promissory Note.

London, to wit. **W** W. late of *London*, In C. B. by
Farrier, was attach- *an Indorsee a-*
ed to answer to T. S. of a Plea of Trespas on *gainst the*
the Case; and whereupon the said T. by *Drawee.*
Lilly 54.
N. B.

By Notes. N. B. his Attorney, complains, That whereas after the first Day of *May* in the Year of our Lord 1705, to wit, the 25th of *May* in the Year of our Lord 1715, at *London* aforesaid, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, one *E. S.* made his certain Note in Writing, called a Promissory Note, subscribed with the proper Hand of him *E. S.* dated the same Day and Year last aforesaid, and the same Note to the aforesaid *W. W.* then and there delivered, by which said Note the aforesaid *E. S.* promised to pay to the aforesaid *W. W.* or his Order, the Sum of 20*l.* in three Months after Date of the same Note, for Value receiv'd: And afterwards, and within the said three Months, to wit, the 23d Day of *July* in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, he the aforesaid *W. W.* by his certain Indorsement subscribed with his proper Hand, and made upon the said Note, assigned that Note to the aforesaid *T. S.* and by the same Indorsement ordered the aforesaid *E. S.* to pay the Contents of the same Note to the said *T. S.* according to the Tenor of the same Note: And the said *T.* in Fact saith, That after the Assignment and Appointment of the same Note, so made as aforesaid, and after the Expiration of the three Months mentioned in the same Note, to wit, on the 23d Day of *August* in the Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, he the said *T.* did shew the said Note, and the Indorsement made thereupon as aforesaid, unto the aforesaid *E. S.* and then and there required the same *E.* to pay the Contents of the same Note, to wit, the said Sum

*Indorsement of
the Note.*

*Averment of
Notice to the
Drawer.*

of 20*l.* therein specified, unto him the afore-
 said *T.* according to the Tenor of the said
 Note, and the Indorsement afore said: But
 the said *E. S.* did not pay, nor has he yet paid
 the said Sum of Money to the said *T.* but the
 afore said *E.* then and there, to wit, on the
 same Day and Year last afore said, refused,
 and hath ever since hitherto refused to pay
 the same Sum of Money; whereof the said
T. afterwards, to wit, on the 24th Day of
August in the Year last afore said, at *London*
 afore said, in the Parish and Ward afore said,
 gave Notice to the afore said *W. W.* And by
 Reason of the Premisses, and by Force of the
 Statute in such Case lately made and pro-
 vided, he the afore said *W. W.* became, and
 was, and is liable to pay to the same *T.* the
 afore said Sum of 20*l.* in the same Note men-
 tion'd; and the same *W.* being so liable in
 Consideration thereof, afterwards, to wit,
 on the same 24th Day of *August* in the Year
 last afore said, at *London* afore said, in the Pa-
 rish and Ward afore said, undertook, and to the
 said *T.* then and there faithfully promised, that
 he the said *W.* would well and faithfully pay
 and content the said Sum of 20*l.* to the said
T. when he should be thereunto afterwards
 required. And also whereas the afore said *W.*
W. afterwards, to wit, on the same 24th Day
 of *August* in the Year last afore said, at *Lon-*
don afore said, in the Parish and Ward afore-
 said, was indebted to the afore said *T.* in other
 20*l.* of lawful Money of *Great Britain*, for
 so much Money before that Time had and
 received by him the said *W. W.* to the Use
 of the said *T. S.* And being so thereupon in-
 debted, he the same *W.* in Consideration
 thereof

By Notes.

And Refusal
of Payment.The Defen-
dant liable.2d Count for
20*l.* received
to the Plain-
tiff's Use.

Declarations, &c.

By Notes. thereof, afterwards, the same Day and Year last above said, at *London* afore said, in the Parish and Ward afore said, undertook, and to the afore said *T.* then and there faithfully promised, that he the same *W. W.* would well faithfully pay and content the same last mentioned 20*l.* unto the afore said *T.* when he should be thereunto afterwards required; yet he the afore said *W.* not regarding his Promises and Undertakings afore said, &c. (as before.)

A Declaration on a Promissory Note made to the Plaintiff's Wife, and also on an Insimul Computasset with himself.

In C. B. on a Note to the Plaintiff's Wife, and Insimul comp. with himself. See Mich. 4 Geo. 1. Rot. 364

London, to wit. **D.** *W.* late of *London*, Merchant, was attached to answer to *W. M.* of a Plea of Trespass on the Case; and whereupon the said *W. M.* by *T. A.* his Attorney, complains, That whereas the afore said *D. W.* after the 1st Day of *May* in the Year of the Lord 1705, to wit, the 13th Day of *August* in the Year of the Lord 1716, at *London* afore said, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, made a certain Note in Writing, call'd a Promissory Note, sign'd and subscribed with the proper Hand of him *D.* bearing Date the same Day and Year last above said, and then and there deliver'd the same Note to *Jane*, then and yet the Wife of him the said *W. M.* by which said Note he the said *D. W.* promised to pay to the said *Jane*, by the Name of *Mrs. Jane Mac-Henry*, in four Months after the Date of the said Note, the Sum of 500*l.* for Value received, as by the said Note manifestly

manifestly appears, which said Note he the said *W. M.* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, accepted, and to that Note then and there agreed: By Reason of which said Premisses, and also by Force of the Statute in such Case lately made and provided, he the same *D.* became, and was, and is liable to pay the aforesaid *William Mac-Henry* the aforesaid Sum of 500*l.* according to the Tenor of that Note: And the said *D.* being so liable, and in Consideration thereof, afterwards, to wit, the Day and Year last abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the same *W.* then and there faithfully promised, That he the same *D.* would well and faithfully pay and content unto the aforesaid *W. M.* the aforesaid Sum of Money, specified in the aforesaid Note, according to the Tenor of the said Note: And also whereas on the aforesaid 13th Day of *August* in the Year of our Lord 1716 abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, they the aforesaid *W. M.* and *W. D.* accounted together of divers other Sums of Money by the said *D.* unto the said *W.* before that Time in Arrear, and at that Time due and unpaid; and upon that Account he the said *D.* was then and there found in Arrear to the said *W. M.* in another Sum of 500*l.* of like law-ful Money; and the said *D.* being so found in Arrear to the said *W.* as aforesaid, in Consideration thereof, on the same Day and Year at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the aforesaid *W. M.* then and there faithfully promised to pay

Insimul com-
putaverunt.

Declarations, &c.

By Notes. pay to the said *W. M.* the said Sum of Money last mentioned, within four Months from thence next following; yet he the aforesaid *D. W.* not regarding his several Promises and Undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *W.* in this Particular, hath not paid the said several Sums of Money, nor any Parcel thereof, within four Months after those Promises and Undertakings, nor hath he at any Time hitherto paid to the said *W.* the said several Sums of Money, or any Penny thereof, or any Way satisfied him the said *W.* for the same, altho' he the said *D.* hath oftentimes, to wit, on the 8th Day of *February*, and at divers other Times both before and since, been requested to do it by the said *W. M.* to wit, at *London* aforesaid, in the Parish and Ward aforesaid: But he the said *D.* hath hitherto altogether refused, and still doth refuse to pay the same Sums of Money to the said *W. M.* to the Damage of him *W. M.* 600*l.* And thereof he brings this Suit, &c.

Plea thereto.

And the aforesaid *D.* by *F. B.* his Attorney, comes and defends the Force and Injury, when, &c. And as to all the Sums of Money in the aforesaid first Promise above-mentioned, the aforesaid *D.* saith, That the aforesaid *W.* ought not to have his said Action therefore against him, because he saith, that after the making of the Note abovementioned, and before the Day of suing out the original Writ of the said *W.* to wit, on the 13th Day of *August* in the Year of the Lord 1716, he the said *W.* at *London* aforesaid, to wit, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, by an Indorsement upon that Note, subscribed with

with his proper Hand, ordered the Contents of the same Note to be paid to one *Timothy Johnson*: And this he is ready to verify: Wherefore he prays Judgment, if the said *W.* ought to have his said Action therefore against him: And as to all the Sums of Money mentioned in the second Promise in the aforesaid Declaration, he also saith, That the aforesaid *W.* ought not to have his said Action therefore against him, because he saith, That the aforesaid *D.* on the 10th Day of *August* in the Year of the Lord 1716, at *London* aforesaid, in the Parish and Ward aforesaid, became bound to the aforesaid *W.* in 1000*l.* by his Writing obligatory, sealed with his Seal, with a Condition there under-written for the Payment of 500*l.* (*not said to whom*) at a Day yet to come, for the aforesaid 500*l.* in the said second Promise mentioned, which said Writing obligatory was then and there delivered to the same *W.* and he the said *W.* then and there accepted of the same Writing obligatory, without that, that the aforesaid *D.* did undertake on the said 13th Day of *August*, or at anytime after the making of the said Writing obligatory, in Manner and Form as the aforesaid *W.* hath in this Declaration above alledged: And this he is ready to verify: Wherefore he prays Judgment if the aforesaid *W.* ought to have his said Action therefore against him.

Traverse.

And the aforesaid *W.* saith, That he for any thing before alledged ought not to be precluded from having his said Action against the aforesaid *D.* because as to the aforesaid Plea of the said *D.* to the said first Promise and Undertaking in the Declaration above-

Replication.

D

mention-

By Pleas. mentioned, the same *W.* saith, That he the said *W.* did not by any Indorsement on the Bill aforesaid, order the Contents of the same Bill to be paid to the aforesaid *Timothy Johnson*, in Manner and Form as the said *D.* hath above in his Plea alledged: And this he prays may be inquired of by the Country: And as to the aforesaid Plea of the said *D.* as to the said second Promise and Undertaking in the Declaration aforesaid above-mentioned, the said *W.* saith, That he for any thing before alledged ought not to be precluded from having his Action aforesaid, as to the said second Promise and Undertaking against the said *D.* because he saith, That he the aforesaid *D.* did not become bound to the same *W.* in 1000*l.* by his Writing obligatory with a Condition there under-written, for the Payment of the aforesaid 500*l.* in the aforesaid second Promise mentioned, in Manner and Form as the aforesaid *D.* hath above in his Plea alledged: And this he likewise prays may be inquired of by the Country, &c.

Demurrer.

And the aforesaid *D.* as to the said Plea of the said *W.* above by replying pleaded, saith, That the said Plea and the Matter therein contained are not sufficient in Law for him the said *W.* to have and maintain his said Action against him the said *D.* To which said Replication he the said *D.* hath no Need, nor is he bound by the Law of the Land in any Manner to answer: And this he is ready to verify: Wherefore he the said *D.* as before prays Judgment if the said *W.* ought to have his said Action against him.

*Joinder in
Demurrer.*

And the aforesaid *W.* saith, That the Plea aforesaid by him *W.* above by replying pleaded,

On Promises.

35

pleaded, and the Matter therein contained, *By Notes.*
as the same is therein in Manner and Form
above pleaded, are good and sufficient in Law
for him the said *W.* to have and maintain his
said Action against him the said *D.* which said
Plea, and the Matter therein contained, he
the same *W.* is ready to verify and prove, as
the Court here shall think fit; and because
the aforesaid *D.* doth not answer to that Plea,
nor doth hitherto in any Manner deny it,
he the said *W.* prays Judgment, and his Da-
mages aforesaid by Occasion of the Premises
to be adjudged to him: And because the *Continuance*
Justices here will advise themselves of and up-
on the Premises, before they render (give)
their Judgment thereon, a Day is given to
the Parties aforesaid here until the Octave of
St. Hilary, to hear their Judgment thereof;
for that the said Justices here are not yet ad-
vised thereof.

Note; On hearing Counsel on both Sides
Judgment was given for the Plaintiff in *Mich.*
1717.

London, to wit. *T.* Butler, late of London, Assumpfit by
Merchant, was attach- *Assignees of*
ed to answer to *N. E.* and *R. M.* Assignees of *two Bankrupts*
the Debts, Goods and Chattels of *D. M.* and *on Promissory*
A. S. Bankrupts, according to the Form of *Notes given by*
the Statutes of Bankrupts lately made and *Defendants*
provided of a Plea of Trespass on the Case; *Servants for*
and whereupon the said *N.* and *R.* by *J. P.* *the Defendant,*
their Attorney complain, That whereas the *payable to the*
aforesaid *D.* and *A.* at the Time of the making *Bankrupts.*
of the several Promissory Notes hereafter *Lilly's En-*
mentioned, being in Company and Partners *tries 41.*

By Notes. in the Trade of Merchandizing, one *R. B.* after the 1st Day of *May* in the Year of the Lord 1705, to wit, on the 18th Day of *August* 1714, being then an Agent for the said *T. B.* who was then a Merchant, and the said *R.* being at that Time also usually intrusted by him the said *T. B.* to make and sign Promissory Notes for the Payment of

1st Count of a
Note for 200l.

Promissory
Notes.

2d Count on
another Note
for 143l. 10s.

Money for him the aforesaid *T.* to the Person or Persons in the same Notes named, had at *London* aforesaid, to wit, in the Parish of, &c. on the Day and Year last mentioned, made a Promissory Note in Writing, subscribed with the proper Hand of him the said *R. B.* bearing Date the same Day and Year last aforesaid, and by the same Note promised to pay to the aforesaid *D.* and *A.* by the Name of Messieurs *Marcon* and Company, or Order, 200l. Sterling, in three Months and fifteen Days after Date of the same Note, *Value receiv'd*, for his said Master *T. Butler*, by Reason whereof, and by Force and Virtue of the Statute in such Case lately made and provided, he the same *T.* became, and was liable to pay to the said *D.* and *A.* the aforesaid 200l. in the said Note mentioned: And the said *T. B.* being so liable to pay, in Consideration thereof, afterwards, to wit, on the 9th Day of *May* in the Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the aforesaid *N. R.* then and there faithfully promised, That he the said *T.* would well and faithfully pay and satisfy the said 200l. in the said Note mentioned, unto the said *N.* and *R.* when he the said *T.* should be thereto afterwards required: And also whereas afterwards,

wards, and after the aforesaid first Day of *May* in the Year of the Lord 1705, to wit, on the aforesaid 18th Day of *August* in the Year of the Lord 1714, he the said *R. B.* being also then the Agent of the foresaid *T. B.* and by him usually intrusted to sign Promissory Notes for the same *T.* for the Payment of the Money in the same Notes mentioned, to the Person or Persons in the same Notes named, at *London* aforesaid, in the Parish and Ward aforesaid, made a certain other Promissory Note in Writing, subscribed with the proper Hand of the said *R. B.* bearing Date the same Day and Year last aforesaid, and by the same Note promised to pay to the foresaid *D.* and *A.* by the Name of Messieurs *Marcon* and Company or Order, 143 *l.* 10 *s.* Sterling, in three Months and 15 Days after Date of the same Note, *Value receiv'd*, for his Master the said *T. B.* by Reason whereof, and by Force of the Statute in such Case lately made and provided, he the same *T.* became liable to pay unto them the said *D.* and *A.* the aforesaid 143 *l.* 10 *s.* in the same Note last mentioned contained, and being so liable to the Payment thereof, he the said *T.* in Consideration thereof, afterwards, to wit, on the aforesaid ninth Day of *May* in the said Year of the Lord 1715, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the said *N.* and *R.* then and there faithfully promised, That he the same *T.* would well and faithfully pay the aforesaid 143 *l.* 10 *s.* in the same Note last mentioned contained, unto the foresaid *N.* and *R.* when he should be thereunto afterwards required: And also whereas afterwards, and after the afore-

Declarations, &c.

By Notes. said 1st Day of *May* in the Year of the Lord 1705, to wit, on the aforesaid 18th Day of *August* in the Year of the Lord 1714 aforesaid, he the said R. B. being then also the Agent of the foresaid T. and by him T. usually intrusted to sign Promissory Notes for him the said T. for the Payment of the Money in the same Notes mentioned, to the Person or Persons therein named, at *London* aforesaid, to wit, in the Parish and Ward aforesaid, made a certain other Promissory Note in Writing, subscribed with the proper Hand of the aforesaid R. bearing Date, (&c. as before for 171 l. 15 s. and a 4th Count for 172 l. 10 s. 10 d. in the same Form.) And also whereas the aforesaid T. afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the same N. and R. as Assignees of the Debts of the aforesaid D. and A. Bankrupts as aforesaid, in 695 l. 15 s. of lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes of the aforesaid D. and A. and by them the said D. and A. unto the said T. and at his Instance and Request before that Time sold and delivered: And being so indebted, he the said T. afterwards, to wit, on the same Day and Year last above-mentioned, at *London* aforesaid in the Parish and Ward aforesaid, in Consideration thereof, undertook, and to the said N. and R. then and there faithfully promised, That he the said T. would well and faithfully pay the said 695 l. 15 s. unto the said N. and R. when he should be thereunto afterwards required: And also whereas afterwards, to wit, on the same Day and Year last above-

said,

3d Count on
another Note
for 171 l. 15 s.

And a 4th for
172 l. 10 s.

5th Count an
Assumpsit for
Goods of the
Bankrupts sold
and delivered
by them to the
Defendant.

said, at L. aforesaid, in the Parish and Ward aforesaid, in Consideration, that the said D. and A. had, at the Request of the said T. before that Time, sold and delivered to the same T. divers other Goods, Wares and Merchandizes of them the said D. and A. he the said T. then and there undertook, and to the same N. and R. as being Assignees of the Debts of the said D. and A. Bankrupts as aforesaid, faithfully promised to pay to them the said R. and N. so much Money as the said Goods, Wares and Merchandizes last mention'd, were reasonably worth at the Time of their said Sale and Delivery: And the said N. and R. in Fact say, That the said Goods, Wares and Merchandizes last mention'd, were reasonably worth at the Time of the said Sale and Delivery thereof to the said T. one other Sum of 695 L. 15 s. of like lawful Money, to wit, at London aforesaid, in the Parish and Ward aforesaid, whereof the aforesaid T. then and there had Notice: Yet he the aforesaid T. not regarding, &c.

6th Count a
Quantum
Meruit on an
implied Pro-
mise.

DECLARATIONS

in Case on other written Contracts and Agreements.

A Declaration by the Bank of England as Indorseees of a Promissory Note to pay 500l. to Sir J.H. on such a Day, for Value Received.

*In C.B. by the Bank as Assignees of a Promissory Note.
See Lilly's Entr. p. 29.*

London, to wit. **T.** P. late of London, Wine-
Cooper, was attached to answer the Governors and Company of the Bank of England, of a Plea of Trespass on the Case: And whereupon the said Governors and Company of the Bank of England by G. N. their Attorney complain, That whereas the foresaid **T.** after the first Day of May in the Year of the Lord 1705, to wit, on the 25th Day of October in the Year of the Lord 1717, at London aforesaid, in the Parish of St. Mary le Bowe in the Ward of Cheap, made his certain Promissory Note in Writing, subscribed with his own Hand, bearing Date the same Day and Year last aforesaid, by which said Note he the said **T. P.** promised to pay to **J. H.** Baronet, or Order, into the Bank of England 524 l. 14 s. 1 d. on the 25th Day

On Promises.

41

Bank, &c.

Day of *January* then next following, for Value receiv'd, on the same 25th Day of *October* in the Year of the Lord 1717 above said; And also whereas the aforesaid *J. H.* Baronet, afterwards, to wit, on the 31st Day of *December* in the Year of the Lord 1717, aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, by an Indorsement upon the same Note, written with his own proper Hand, ordered and appointed the aforesaid 524*l.* 14*s.* 1*d.* mentioned in the same Note, to be paid to the Governors and Company of the Bank of *England*, or to their Order, according to the Tenor of the same Promissory Note; by Reason of which said Premises, and also by Force of the Statute in such Case lately made and provided, he the said *T.* became liable to pay to the aforesaid Governor and Company of the Bank of *England* the aforesaid 524*l.* 14*s.* 1*d.* in the said Promissory Note mentioned, according to the Tenor and Effect of the same Promissory Note, and of the Indorsement aforesaid: And he the said *T. P.* being so liable, in Consideration thereof, afterwards, to wit, on the same Day and Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the said Governors and Company of the Bank of *England* faithfully promised to pay to the aforesaid Governors and Company of the Bank of *England* the same 524*l.* 14*s.* 1*d.* in the aforesaid Promissory Note mentioned, according to the Tenor and Effect of the said Promissory Note: And also whereas the aforesaid *T. P.* afterwards, to wit, the 25th Day of *January* in the Year above said, at *London* aforesaid, in the Parish and Ward aforesaid,

Indeb. Aff.
for Money lent.

was.

Bank, &c. was indebted to the said Governors and Company of the Bank of *England*, in other 524 *l.* 14 *s.* 1 *d.* for the like Sum of Money unto the aforesaid *T.* and at his Special Instance and Request before that Time advanced and lent by them the said Governors and Company of the Bank of *England*; and he the said *T.* being so indebted, in Consideration thereof, afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the said Governors and Company of the Bank of *England* then and there faithfully promised, That he the said *T.* would well and faithfully pay and content the said 524 *l.* 14 *s.* 1 *d.* unto the said Governors and Company of the Bank of *England*, when he should be afterwards thereto required: Yet the aforesaid *T.* *P. &c. (as usual.)*

Hilary, George II.

Cooke.

Declaration against an Executrix on a Promissory Note of her Testator.

London, to wit. **K.** *M.* late of *London*, Widow, Executrix of the last Will and Testament of *H. M. Esq;* deceased, was attached to answer *T. G.* of a Plea of Trespass on the Case, &c. And whereupon the said *T.* by *W. W.* his Attorney, complains, That whereas the said *H.* in his Life-time, to wit, on the seventh Day of *August* in the Year of our Lord 1730, at *London*, to wit, in the Parish of *St. Mary le Boue* in the Ward of *Cheap*, made his certain Note in Writing called a Promissory Note, his own proper

proper Hand being thereunto subscribed, and by the said Note promised to pay to the said T. by the Name of Captain T. G. 800 l. with Interest, for Value received; and by reason of the Premises and by Force of the Statute in that Case lately made and provided, the said H. in his Life-time became liable to pay to the said T. the said Sum of Money, according to the Form and Effect of the said Note: And being so thereupon liable, he the said H. in his Life-time, in Consideration thereof afterwards, to wit, on the same Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised the said T. to pay the said T. the said Sum of Money in the said Note mentioned, when he should be thereunto afterwards required: **AND**

also whereas the said H. in his Life-time afterwards, to wit, on the same Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, was indebted to the said T. in 500 l. of lawful Money of Great Britain for so much Money to the Use of the said T. before that Time had and received by the said H. in his Life-time; and being so indebted he the said H. in his Life-time, in Consideration thereof afterwards, to wit, on the same Day and Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised to the said T. that he the said H. would well and truly pay and content to the said T. the aforesaid 500 l. when he should be thereunto afterwards required:

And also whereas the said H. in his Life-time afterwards, to wit, on the same Day and Year

Indeb. Aff. for
Money had by
Testator.

For Money laid
out for the Tes-
tator.

De Potes. Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *T.* in 200*l.* of like lawful Money, for so much Money by the said *T.* before that Time laid out, disbursed, paid and expended for the said *H.* in his Life-time at his like special Instance and Request; and being so thereupon indebted, the said *H.* in his Life-time, in Consideration thereof afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised the said *T.* that he the said *H.* would well and truly pay the said 200*l.* to the said *T.* when he should be thereunto afterwards required: **And also whereas** the said *T.* afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, at the special Instance and Request of the said *H.* in his Life-time had done and performed for the said *H.* divers Works, Labour and Services, in and about the Business of the said *H.* the said *H.* in his Life-time, in Consideration thereof, afterwards, to wit, on the same Day and Year last above said, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him the said *T.* so much Money as the said *T.* reasonably deserved to have, for his said Works, Labours and Services, and the said *T.* in Fact says, That he reasonably deserved to have for those Works, Labours, and Services, the Sum of 200*l.* of like lawful Money, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, whereof the said *H.* in his Life-time then and there

Quant. Me-
ruit, Work
and Labour
done for Testa-
tor.

On Promises.

45

there had Notice: **And also whereas** the said *H.* in his Life-time afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said *T.* in other 200*l.* for other Work, Labour, and Service, by the said *T.* for the said *H.* in his Life-time, at the like special Instance and Request of the said *H.* before that Time done and performed; and being so thereupon indebted, the said *H.* in his Life-time, in Consideration thereof, afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised the said *T.* to pay the said *T.* the said 200*l.* last mentioned, when he should be thereunto afterwards required: **And also whereas** afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, the said *H.* in his Life-time was indebted to the said *T.* in 1280*l.* of like lawful Money, for the like Sum of Money by the said *H.* in his Life-time before that Time borrowed, had and received of the said *T.* and being so indebted, the said *H.* in his Life-time, in Consideration thereof, afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and then and there faithfully promised the said *T.* that he the said *H.* would well and truly pay to the said *T.* the said 1280*l.* when he should be thereunto afterwards required: Yet the said *H.* in his Life-time, and the said *K.* after the Death of the said

By Notes.

Indeb. Aff.
for Work and
Labour done for
Testator.

Indeb. Aff.
for Money bor-
rowed by Tes-
tator.

Breach.

Inland.

saïd H. no ways regarding the several Promises and Undertakings of the saïd H. so made as aforefaïd, &c.

A Declaration on an Inland Bill of Exchange, by the Indorsee against the Drawer.

In B. R. on
an Inland Bill
by the Indorsee
against the
Drawer.
Lilly's Entr.
44.

Middlesex, to wit. J. M. complains of J. S. being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself; for that, to wit, That whereas the aforefaïd J. Sleddal, on the 13th Day of *April* in the Year of our Lord 1717, at *Westminster* in the County aforefaïd, (he then being a Person using Commerce, to wit, at *Westminster* aforefaïd) had according to the Use and Custom of Merchants made his certain Bill of Exchange in Writing, subscribed with his Hand, bearing Date the same Day and Year, and directed the same Bill of Exchange to one K. E. by which saïd Bill of Exchange the same J. S. requested the saïd K. E. to pay to one T. P. or his Order, the Sum of 20*l.* twenty Days after Sight of the same Bill, Value received, and to place it to the Account of Subsistence for the Use of the Company of Invalids, under Capt. *Spicer*, at Garrison at *Jersey*, and that it should be allow'd on the Account by the aforefaïd *John Sleddall*; and the saïd T. P. afterwards, to wit, on the 14th Day of *May* in the Year of the Lord abovefaïd, at *Westminster* aforefaïd, by his Indorsement upon that Bill of Exchange made according to the

1st Indorsement.

the Use and Custom of Merchants, ordered the Contents of the same Bill, to wit, the said 20*l.* to be paid to one *J. F.* or to his Order, which said *J. F.* afterwards, to wit, on the 27th Day of *May* in the Year aforesaid, at *Westminster* aforesaid, did by his Indorsement made upon that Bill, according to the Usage and Custom of Merchants, order the Contents of the same Bill, to wit, the said 20*l.* to be paid to the aforesaid *J. M.* or his Order: And the same *J. M.* in Fact saith, That he afterwards, to wit, on the 1st Day of *June* in the Year aforesaid, at *Westminster* aforesaid, did shew the same Bill to the before-named *K. E.* with the said Indorsements thereupon made, and then and there requested him to accept the said Bill: But he the said *K. E.* did not accept the said Bill, but then and there altogether refused to accept the same, or ever to pay the said 20*l.* in the same Bill mentioned, of which Premisses the aforesaid *J. S.* afterwards, to wit, on the 8th Day of *June* in the Year aforesaid, at *Westminster* aforesaid, had Notice; by Reason of which said Premisses he the said *J. Sleddal*, according to the Custom of Merchants became liable to pay the said 20*l.* in the said Bill of Exchange mention'd; and he the said *J. S.* being so liable, afterwards, to wit, on the same Day and Year at *Westminster* aforesaid, in Consideration thereof, undertook, and to the same *J. M.* then and there faithfully promised, that he the said *J. S.* would well and faithfully pay to the said *J. M.* the same 20*l.* And also whereas the said *J. S.* on the 30th Day of *August* in the Year aforesaid, was indebted unto the said *J. M.* in 80*l.*

Indorsed to Plaintiff.

Indorsed to Plaintiff.

Acceptance refused, and Notice to the Drawer, whereby he became chargeable.

Indebitor. Assumpsit for Money received by the Defendants to the Plaintiff's for Use.

Inland.

for Money before then had and received by the said J. S. to the Use of him J. M. and being so indebted, he the said J. S. on the Day and Year last abovesaid, at *Westminster* abovesaid, in Consideration thereof undertook, and to the said J. M. then and there faithfully promised, that he the said J. S. would well and truly pay the said 80 l. to the said J. M. Yet the said J. S. not regarding his said several Promises and Undertakings, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said J. M. in this Particular, has not paid the said several Sums of Money, or any Part thereof, to the said J. M. (although afterwards, to wit, on the 13th Day of *August* in the Year abovesaid, and often afterwards, at *Westminster* abovesaid in the County abovesaid, the said J. S. was thereunto requested by the said J. M.) but hitherto to pay him the same he hath altogether refused, and still doth refuse, to the Damage of the said J. M. of 80 l. And thereupon he brings this Suit, &c.

A Declaration on a special Assumpsit in Consideration of two Foreign Bills of Exchange, drawn by the Plaintiff, payable to the Defendant.

Mich. 5 Geo. I.

In C. B. on a special Assump-
in Consideration
of the Plaintiff's
drawing two Bills of Ex-
change at De-

London, to wit. J. *Aques Henriquez*, late of *London*, Merchant, was attached to answer to *William Law* of a Plea of Trespass on the Case, and whereupon the said Defendant's Request, payable to Defendant for 4500 *French Livres*.

49

Foreign.

said,

Foreign.

said, faithfully promised, That he the said *J.* would receive the same two several Bills of Exchange of the same *W.* and also well and faithfully pay unto the same *W.* 253 *l.* 2 *s.* 6 *d.* Sterling of lawful Money of *Great Britain*, for the same, when he should be afterwards thereunto required; and the said *W.* in Fact saith, That he giving Credit to the aforesaid Promise and Undertaking of the said *J.* afterwards, to wit, on the same 12th Day of *May* in the Year aforesaid, at the Parish aforesaid, did according to the said Usage and Custom of Merchants make two several Bills of Exchange for one and the same Sum of Money, subscribed with the proper Hand and Name of him *W. L.* bearing Date at *London* aforesaid, on the same Day and Year last mention'd, and directed the same two several Bills of Exchange to the said *J. L.* by the Name of *Mr. John Law*, Director of the Bank at *Paris* in Parts beyond Sea, and by the same several Bills of Exchange required the said *J. L.* to pay the same at Usance in Manner and Form following, to wit, he the said *W.* by the first of his said two Bills of Exchange required the said *J. L.* to pay to the Order of the said *J. H.* 4500 *Livres Tournois* in Specie at Usance, Value of himself, as by Advice; And the same *W.* by the second of his said two Bills of Exchange required the same *J. L.* to pay (his said first Bill of Exchange being unpaid) to the Order of the said *Jaques H.* 4500 *Livres Tournois* at Usance, Value of himself, as by Advice: And the aforesaid *W. L.* further saith, That he the said *W.* afterwards, to wit, on the 31st Day of *May* in the Year above said, at the Parish and Ward aforesaid, did

On Bills of Exchange.

51

Foreign.

did deliver to the said *Jaques H.* his said first Bill of Exchange so subscribed, and made and directed as aforesaid, which said Bill he the said *Jaques H.* did then and there receive: And the said *W.* further saith, That he afterwards, to wit, on the said 31st Day of *May* in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, did offer to deliver unto the said *J.* his said second Bill of Exchange so subscribed, and made and directed as aforesaid; but he the said *Jaques* did not receive his said second Bill of Exchange, and then and there wholly refused to receive the same Bill: And the said *Jaques H.* contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* of the aforesaid 253 *l.* 2 *s.* 6 *d.* Sterling, hath not yet paid the said 253 *l.* 2 *s.* 6 *d.* to the said *W.* or in any Manner contented him for the same, altho' the said *Jaques* was afterwards, to wit, the same Day and Year at *London* aforesaid, in the Parish aforesaid, and at divers other Times both before and since was and hath been required to pay the same: And also whereas the aforesaid *Jaques* on the same Day and Year last above mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted unto the aforesaid *W.* in 300 *l.* of lawful Money of *Great Britain*, for the like Sum of the Moneys of him *W.* by the said *W.* at the special Instance and Request of him *Jaques* for the same *Jaques* before then laid out, lent and paid, and being so indebted, he the same *Jaques* in Consideration thereof, afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to

Indeb. Aff.
for Money laid
out, &c.

Foreign.

Indeb. Aff.
for Money lent.

the said *W.* then and there faithfully promised, that he the said *J. H.* would well and truly pay the said 300*l.* to the said *W.* when he the said *J. H.* should be thereunto required: And also whereas the aforesaid *Jaques H.* afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the aforesaid *W.* in other 300*l.* of like lawful Money, for the like Sum of Money of him *W.* at the special Instance and Request of him *Jaques H.* by the same *W.* unto the aforesaid *Jaques* before that Time advanced and lent, and being so indebted, he the same *Jaques* in Consideration thereof, afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and to the same *W.* then and there faithfully promised, That he the said *Jaques* would well and faithfully pay unto the same *W.* the aforesaid Sum of Money last mentioned, when he should be afterwards thereunto required: Yet the aforesaid *Jaques* not regarding his several Promises and Undertakings aforesaid, so made in Form aforesaid, but contriving and fraudulently intending, &c. (as usual.)

The Plea,
Payment.

And the aforesaid *Jaques H.* by *T. W.* his Attorney comes and defends the Force and Injury, when, &c. and saith, That the said *W. L.* ought not to have his said Action against him, because he saith, That after the making of the several Promises and Undertakings aforesaid in the said Declaration of the said *W.* above specified, and before the suing forth of the Original Writ of him *W.* to wit, the 20th Day of *August* in the Year of the Lord

On Bills of Exchange.

53

Foreign.

1718, at London, to wit, in the Parish of, &c. aforesaid, he the same *Jaques H.* did pay unto the said *W.* 253 l. Sterling, in full Satisfaction and Discharge of the said several Promises and Undertakings in the said Declaration above-mention'd, which said 253 l. Sterling he the said *W.* did then receive and accept of the said *Jaques* in full Satisfaction and Discharge of the Promises and Assumptions aforesaid: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *W.* ought to have his said Action against him, &c.

And the said *W.* saith, That he by any Thing before alledged by the said *Jaques* ought not to be barred from having his said Action thereof against the said *Jaques*, because he saith, That the same *Jaques H.* did not pay unto the said *W.* the aforesaid 253 l. Sterling, in full Satisfaction and Discharge of the aforesaid several Promises and Assumptions above-mentioned, in the Declaration of him *W.* in Manner and Form as the same *Jaques H.* hath in Pleading thereof above alledged: And this he prays that it be inquired by the Country.

And the said *Jaques H.* saith, That the Plea of the said *W. L.* above by replying pleaded, and the Matter therein contained, are not sufficient in Law for him the said *W.* to maintain the having his said Action thereof against him the said *J. H.* and that he the said *Jaques* hath no Necessity, nor is by the Law of the Land bound in any Manner to answer to that Plea, pleaded in the Manner and Form aforesaid: And this he is ready to verify: Wherefore for Default of a sufficient

Foreign.

cient Replication of the said *W.* in this particular, be the same *Jaques* prays Judgment, and that the aforesaid *W.* may be barr'd from having his said Action thereof against him.

Joinder.

And the aforesaid *W. L.* for that he hath above by replying alledged sufficient Matter in the Law for him the said *W.* to maintain the having his Action aforesaid against the aforesaid *Jaques H.* which said Matter he is ready to verify, and which said Matter the aforesaid *Jaques* hath not denied, nor in any Manner answered thereto, but altogether refuses to admit the verifying the same, prays Judgment, and his Damages by Occasion of the not performing the several Promises and Undertakings aforesaid to be adjudged to him: And because the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, a Day is given to the Parties aforesaid to be here on the Octave of St. Hilary, to hear their Judgment thereupon, &c.

A Declaration upon a Bill of Exchange directed by a Merchant at Lisbon to another at London, which the Defendant accepted, but afterwards refused to pay, wherein the Custom of Merchants and Factors at London and Lisbon touching Bills of Exchange is set forth.

*In C. B.
On a Bill
drawn at Lisbon,
payable in London,
Payment refused
after Acceptance.*

London, to wit. J. T. late of London, Merchant, was attached to answer to R. G. in a Plea of Trespass on the Case,

N. B. The Custom of London, &c. See Brown's Vad. Mecum 22, 23.

On Bills of Exchange.

55

Foreign.

Case, &c. And whereupon the said R. G. by L. R. his Attorney complains, That whereas the City of *London*, in that Part of the Kingdom of *Great Britain* called *England*, is, and from the Time whereof the Memory of Man is not to the contrary hath been an ancient City: And also whereas the City of *Lisbon* in the Kingdom of *Portugal*, in Parts beyond the Sea, also is, and during the whole Time aforesaid hath likewise been an ancient City: And also whereas at *London* aforesaid there is, and from the Time whereof the Memory of Man is not to the contrary hath been a Custom, as well amongst the Merchants and others residing at *London* aforesaid, and elsewhere within *England*, as amongst the Merchants and others residing at *Lisbon* aforesaid, used and approved, to wit, that if any such Merchant, or any other Person or Persons, who have received any Bill of Exchange from any Merchant, or any other Person or Persons in the Part or Parts beyond the Sea, who made the same Bill or Bills of Exchange, and subscribed the same with his or their Hand or Hands, according to the Laws and Customs of Merchants, and had confessed himself or themselves to have received the said Bill or Bills of Exchange, and had accepted the same Bill or Bills; that then such Merchants, or other Person, who had then so confessed himself to have receiv'd such Bill or Bills of Exchange, and to have accepted the same, is liable, and from the Time whereof the Memory is not to the contrary, hath been according to the Laws and Customs of Merchants liable to

Foreign,

pay to such Person or Persons as in the said Bill or Bills were nam'd, at the Day or Days in the same Bill or Bills specified, such Sum or Sums of Money, as in the same Bill or Bills of Exchange should be mentioned: And the aforesaid R. G. (Merchant) in Fact saith, That one T. K. a Merchant, residing at *Lisbon* aforesaid, on the 1st Day of *September* in the Year of the Lord 1730, according to the Computation used at *Lisbon* aforesaid, being the 11th Day of *September* in the said Year 1730, according to the Computation used here in *England*, by his certain Bill of Exchange, subscribed with the Hand of him T. K. and here, in Court produced, and dated the same Day and Year last mentioned, required the aforesaid J. T. to pay unto the aforesaid R. G. the Sum of 115 *l.* 17 *s.* 6 *d.* of lawful Money of *Great Britain*, upon thirty Days Sight; he the said J. T. knowing the said Bill of Exchange to be so directed, and acknowledging that he had received the same Bill, afterwards, to wit, on the 10th of *October* in the fifth Year of the said Lord the now King, at *London* aforesaid, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, accepted the said Bill of Exchange so directed to the said J. T. for Payment of the aforesaid 115 *l.* 17 *s.* 6 *d.* to the said R. G. as aforesaid, and promised Payment thereof, according to the Tenor of the said Bill: Yet the said J. T. not regarding said Receipt and Acceptance of the said Bill, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. G. in this Particular, hath not paid 115 *l.* 17 *s.* 6 *d.*

On Bills of Exchange.

57

to the said R. G. but altogether refuses, &c. tho' requested, &c. (as before.)

Foreign.

A Declaration (carefully drawn) upon two Bills of Exchange, directed by the Defendant, a Merchant, to his Factor, for Payment of Money in London, in Consideration of Money received at Antwerp of the Plaintiff's Factor there.

London, to wit. **R.** H. Alderman of London, and a Merchant-Adventurer of England, complains of M. C. the Younger, Merchant, being in the Custody of the Marshal of the Marshalsea of our Lord the King, before the King himself; for that, to wit, (such a Day and Year of the Lord) at Antwerp, in Parts beyond the Sea, he the aforesaid R. H. by the Hands of one R. J. then the Factor of the said R. H. had at the special Instance and Request of one E. C. the then Servant or Agent of him the said M. then and there yielded up and delivered to the said E. C. then being at Antwerp aforesaid, to the proper Use of him the said M. the Sum of 107 l. 6 s. 8 d. in Flemish Money, to be paid to the aforesaid R. in England; he the said R. J. in Consideration thereof, made a Bill of Exchange for Payment of 70 l. Sterling, at double Usance, according to the Use of Merchants, to wit, at the End of two Months then next following, by Way of Exchange, to wit, to pay at the Rate of 30 s. and 8 d. Flanders Money, for every Pound of current Sterling Money: And whereas the aforesaid

In B. R.
On two Bills
of Exchange
for Payment
in London, of
Money received
at Antwerp.
Bro. Vade
Mecum 23.
24.

Foreign. aforesaid *E. C.* upon the Receipt of the aforesaid 107 l. 6 s. 8 d. *Flemish Money*, for the Use of the said *M.* as aforesaid, on the same (*Day and Tear supra*) at *Antwerp* aforesaid, had according to the Use of Merchants delivered to the aforesaid *R. J.* then there, the Factor of him *R. H.* to the Use of him *R. H.* two several Bills of Exchange, then subscribed with the proper Hand and Name of the said *E. C.* and directed to the said *M. C.* the then Master of the said *E. C.* By the first of which said Bills of Exchange, he the said *E. C.* then and there required and appointed the aforesaid *M.* to pay at double Usance, to wit, at the End of two Months then next following, unto the aforesaid *R. H.* or the Bearer of the said first Bill, 70 l. Sterling, in *London* aforesaid, (his said second Bill not being paid;) And by the second Bill of the said two Bills of Exchange, he the aforesaid *E.* in like Manner then and there required and appointed the aforesaid *M.* to pay at double Usance, to wit, at the End of two Months then next following, unto the aforesaid *R. H.* or the Bearer of the said second Bill, 70 l. Sterling, in *London* aforesaid (his said first Bill being then not paid): And also whereas the aforesaid *R. H.* afterwards, and within the aforesaid two Months, to wit, on the first Day of *October* in the said Year of our Lord, &c. at *London* aforesaid, in the Parish and Ward aforesaid, did, according to the Use of Merchants, shew and deliver to the aforesaid *M.* the said second Bill of Exchange, subscribed with the proper Hand and Name of the said *E. C.* the said first Bill of Exchange being then not paid, nor was any Part of the said

70 l.

70 l. Sterling at that Time paid or satisfied; he the aforesaid *M.* afterwards, to wit, on the said first Day of *October* in the Year, &c. aforesaid, at *London* aforesaid, to wit, in the Parish and Ward aforesaid, for and in Consideration of the Premises, undertook, and to the aforesaid *R.* did then and there faithfully promise, That he the said *M.* would well and faithfully pay unto the said *R.* the aforesaid 70 l. Sterl. at *London* aforesaid, at the End of the said two Months, according to the Tenor of the same Bill: And the said *R.* in Fact saith, That he the said *M.* did afterwards, (to wit, such a Day, &c.) pay unto the aforesaid *R.* 40 l. Parcel of the said 70 l. But he the said *M.* not regarding his Promise and Undertaking aforesaid, but (as to the Payment of the Residue of the said 70 l.) contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *R.* of 30 l. being the Residue of the said 70 l. hath not paid the same, but hath hitherto refused, and still doth refuse to pay the said 30 l. to the said *R.* although the said *M.* was afterwards, to wit, on the 10th Day of *January* in the Year, &c. aforesaid; at *London* aforesaid, to wit, in the Parish and Ward aforesaid, requested by the said *R.* to do it: Whereupon the said *R.* saith, That he is the worse, and hath Damage to the Value of 100 l. And thereof he brings this Suit, &c.

Payment of
Part, and Re-
fusal of the
Residue.

A. Declar

Foreign.

A Declaration on a Foreign Bill of Exchange on Delivery of 100l. at London, to be paid (at single or one Month's Usance at Amsterdam) by the Defendant, who drew two Bills on one T. W. there, and promised if W. did not pay, &c. be the Defendant would pay it on Request; with the Pleadings, and a Special Verdict thereon.

*In B. R.
On Two Bills
for Money de-
livered here to
be paid at
Amsterdam.*

London, to wit. *S. S. Merchant, complains of W. B. being in the Custody of the Marshal of the Marshalsea of our Lord the King, before the King himself, for that, to wit, That whereas on the sixth Day of D. in the Year of our Lord —, at London aforesaid, to wit, in the Parish of St. Mary le Bowe in the Ward of Cheap, he the aforesaid S. S. being then a Merchant, had at the special Instance and Request of him W. then and there at single Usance delivered to the aforesaid W. then also a Merchant, to the proper Use of him the said W. 100l. of lawful Money of Great Britain, of the proper Moneys of him the said S. and to pay at the End of one Month then next following, by Way of Exchange, unto him the said S. the Sum of 150 l. 11 s. in current Money of Holland in Amsterdam beyond the Sea: And whereas he the aforesaid W. upon the Receipt of the aforesaid 100 l. as aforesaid, had on the same sixth Day of December in the Year of, &c. aforesaid, at London aforesaid, in the Parish and Ward aforesaid, for the*

On Bills of Exchange.

61

foreign.

the Consideration aforesaid, delivered according to the Usage of Merchants, unto the aforesaid *S. S.* two several Bills of Exchange, subscribed with the proper Hand and Name of the said *W. B.* and directed to one *T. W.* then being in *Amsterdam* aforesaid, in the said Parts beyond Sea, and by the first of the same Bills did request and appoint the aforesaid *J.* to pay at single Ufance his said first Bill of Exchange, (the said second Bill not being paid) to one *G. C.* or Bearer of the said Bill of Exchange, to the Use of him *R. C.* 150*l.* 11*s.* 8*d.* of *Flemish* Money, current in *Amsterdam* aforesaid, at the Ufance there, from *London* aforesaid, to wit, at the End of one Month from thence next following: And by the second Bill of the said two Bills, he the said *W.* did then and there likewise request and appoint the aforesaid *T. W.* to pay unto the aforesaid *G. C.* to the Use of him the said *S. S.* 150*l.* 11*s.* 8*d.* of like *Flemish* Money, current in *Amsterdam* aforesaid (the said first Bill of Exchange of him the said *W.* therein mentioned being unpaid) he the said *W.* afterwards, to wit, on the aforesaid sixth Day of *December* in the Year of, &c. aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, for and in Consideration of the Premisses, did undertake, and unto the aforesaid *S. S.* then and there faithfully promised, That if the aforesaid *T. W.* did not accept the aforesaid Bills of Exchange, or one of them, from the aforesaid *S. S.* nor pay the said 150*l.* 11*s.* 8*d.* current *Flemish* Money, unto the said *G. C.* to the Use of him *S. S.* at the End of one Month then next ensuing, That then he the said *W.* would well and faithfully pay to the said *S. S.*

100*l.*

Foreign.

100*l.* of lawful Money of Great Britain; when he should be thereunto required: And the same *S.* in Fact saith, That he the said *S.* afterwards, and within the said one Month, to wit, on the 26th Day of *December* in the Year, &c. aforesaid, at *Amsterdam* aforesaid, did shew and offer unto the aforesaid *T. W.* the aforesaid two Bills of Exchange, and did then and there request the aforesaid *T. W.* to accept the aforesaid two Bills of Exchange, or one of them: And that he the said *T. W.* did then and there wholly refuse to accept the same two Bills of Exchange, or either of them: Whereupon he the said *S. S.* afterwards, and within the aforesaid Month, to wit, on the 27th of *December* in the Year, &c. aforesaid, at *Amsterdam* aforesaid, protested the same Bills, according to the Use (Custom of Merchants): And afterwards, to wit, on the 20th Day of *March* in the Year, &c. to wit, in the Parish, &c. aforesaid, he the said *S.* gave Notice to the aforesaid *W.* That the said Bills and either of them were refused to be accepted by the aforesaid *T. W.* and likewise gave Notice to the said *W.* of the Protest of the said Bills so made as aforesaid: And further he the said *S.* in Fact saith, That the aforesaid *T. W.* did not at the End of the said one Month (whereon it ought to have been paid) or at any Time afterwards, pay to the aforesaid *G. C.* the aforesaid 150*l.* 11*s.* 8*d.* *Flemish* Money, to the Use of the said *S.* (according to the Tenor of the said Bills); yet the aforesaid *W.* not regarding his Promise and Undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to decelve and defraud the said

*Averment of
Tender and
Refusal.*

*Protest and
Notice of Non-
acceptance.*

*And also of
Non-payment.*

said S. of the aforesaid 100*l.* of lawful Mo-
ney of *Great Britain*, hath not yet hitherto
paid the said 100*l.* of lawful Money of *Great
Britain*, unto the aforesaid S. altho' he the
said W. afterwards to wit, on the 20th Day
of *August* in the Year of, &c. at *London* a-
foresaid, to wit, in the Parish and Ward
aforesaid, was required to do it by him the
said S. whereby he the said S. S. was greatly
hurt and injured in his Credit with divers of
the said Lord the King's now faithful Sub-
jects, and especially with A. J. and G. K. to
whom he the said S. was indebted in the like
Sum of 100*l.* of lawful Money of *Great Bri-
tain*, and to whom he the said S. had pro-
mised to pay the same 100*l.* at a Day now
past, upon Hopes of the faithful Perform-
ance of the said Promise and Undertaking, so
made to the said S. by the said W. as afore-
said; whereby he the said S. saith, That he
is injured, and hath Damage to the Value of
100*l.* And therefore he brings this Suit, &c.

*Special Da-
mage.*

And the aforesaid W. B. by T. J. his Attor-
ney comes and defends the Force and Inju-
ry, when, where, and in what Manner the
Court of the Lord the now King now here
shall think fit, and saith, That he did not un-
dertake in Maner and Form as the aforesaid
S. doth above declare against him: And of this
he puts himself upon the Country: And the
aforesaid S. likewise, &c. Therefore let a
Jury thereof come thereupon before the Lord
the now King at *Westminster*, on *Monday* next
after five Weeks of *Easter*, &c. (See the
Form of a *Venire* hereafter.)

*The Plea,
NonAssump-
sit, &c.*

*Issue joined
and Venire
awarded.*

Afterwards, at the Day and Place within
contained, before the right trusty and well

*Return of the
Postea.*

I beloved

Foreign.

Special Verdict.

beloved R. Lord R. Chief Justice of the Lord the now King within written, assigned to hold Pleas before the King himself, E. G. Esq; being associated to him according to the Form of the Statute, &c. came as well the within-named S. S. as the within-named W. B. by their Attorneys within contained, and the Jurors of the Jury, whereof Mention is within made, being demanded, likewise came, who to speak the Truth of the within contained being chosen, tried and sworn, say upon their Oath, That the within-named S. S. and W. B. are Merchants, and that on the sixth Day of *December* in the ——— Year of the Reign of our Lord the present King, the said S. S. being a Merchant, did at the special Instance and Request of the within named W. B. then likewise a Merchant, deliver to the said W. to the proper Use of him S. 100 l. of lawful Money of *Great Britain*, being the Money of him S. and to pay by Way of Exchange to the said S. or Order, 150 l. 11 s. 8 d. of current *Flemish* Money, at *Amsterdam* beyond the Sea; And that the said W. upon the Receipt of the said 100 l. within specified, did on the said sixth Day of *December* in the Year within specified, for the Consideration aforesaid, deliver according to the Usage of Merchants, to the aforesaid S. the within specified two several Bills of Exchange, subscribed with the proper Hand and Name of the said W. B. and directed to the within specified T. W. then being in *Amsterdam* aforesaid, in Parts beyond the Seas; And by the same Bills required and appointed the said T. W. to pay the same at Usance, to wit, the first of the said Bills of Exchange (the se-

On Bills of Exchange.

65

Foreign.

cond Bill not being paid) to be paid to the within named G. C. or the Bearer of the said Bill of Exchange, to the Use of him S. S. 150*l.* 11*s.* 8*d.* current *Flemish* Money, in *Amsterdam* aforesaid, at the Usance from *London* within mentioned: And by the second Bill of Exchange of the said two Bills, he the within named W. did then and there likewise require and appoint the said T. W. to pay to the aforesaid G. C. to the Use of him S. 150*l.* 11*s.* 8*d.* of current *Flemish* Money, in *Amsterdam* aforesaid, at the Usance from *London* within mentioned (the said 150*l.* 11*s.* and 8*d.* current *Flemish* Money, mentioned in the said first Bill of Exchange of him W. not being paid.) And the Jurors aforesaid do further say upon their Oath, That the Custom, Usage and Practice of Merchants, is, and from the Time whereof the Memory of Man is not to the contrary hath been, That all Sums of Money payable on any Bill of Exchange, at Usance, are to be paid at the End of one Month next following the making of the Bill of Exchange, by which that Sum of Money is appointed to be paid: And further the aforesaid Jurors do upon their Oath say, that there is a certain Custom and Usage of Merchants used, and from the Time whereof the Memory of Man is not to the contrary hath been used and approved, That if any Factors or Party to whom any Bill of Exchange shall be directed, shall not accept the same Bill, or shall not pay the Sum of Money in the same contained, and directed to be paid according to the Tenor of the same Bill of Exchange; then he who subscribed or directed the same Bill of Exchange, ought to

The Custom of Merchants of Money payable at Usance, on Bills of Exchange.

F

pay

Foreign.

pay the first Sum so to him delivered or paid at any Time whatsoever, after the Time expired, by which the said Sum so paid and delivered, ought and was appointed by the said Bill of Exchange to have been paid, whensoever he that received such Sum shall be by the Deliverer thereof thereunto requir'd: And the Jurors aforesaid further say upon their Oath, That the within named *T. W.* to whom the within mentioned Bills of Exchange were directed, altho' the aforesaid Bills of Exchange were shewn and offer'd to him the said *T. W.* yet he accepted neither of the said Bills of Exchange, nor paid any of the Sums of *Flemish* Money, payable by the same Bills of Exchange: And the Jurors aforesaid further say upon their Oath, That the within named *S. S.* did within the Time in the said Bills specified, wherein the within mentioned Sums of *Flemish* Money were by the said Bills of Exchange to have been paid, request the within named *W. B.* to repay unto the said *S.* the within specified Sum of 100*l.* and that he the said *W.* hath not yet repaid the said 100*l.* but whether upon the whole Matter aforesaid in the Form aforesaid it shall appear to the Court here, That the aforesaid *W.* did undertake in Manner and Form as the within named *S. S.* hath within declared, or not, they the Jurors aforesaid are wholly ignorant, and thereof pray the Advice of the Court of the said Lord the now King here: And if upon that whole Matter so found in the Form aforesaid it shall appear to the Court of the said Lord the now King here, That the aforesaid *W.* did undertake in Manner and Form within specified, then the same Jurors do say
upon

upon their Oath, That the within named *W. South Sea*.
B. did undertake in Manner and Form as the
 within named *S. S.* doth within complain a-
 gainst him, and they assess the Damages of
 him *S.* by Occasion of the not performing of
 the aforesaid Promise and Undertaking, be-
 sides his Charges and Costs laid out by him
 about his Suit in this Particular, to 110*l.*
 and for those Charges and Costs to 53*s.* 4*d.*
 And if upon the whole Matter aforesaid in
 the Form aforesaid it shall appear to the
 Court of the said Lord the now King here,
 That the aforesaid *W.* did not undertake in
 Manner and Form as is within contained, then
 the said Jurors say upon their Oath, That
 the aforesaid *W. B.* did not undertake in Man-
 ner and Form as he the said *W.* hath for him-
 self by his Pleading within alledged. There-
 fore, &c.

Damages,
 Charges and
 Costs.

N. B. The Cause of this Special Verdict seems
 to have been for that the Plaintiff in his De-
 claration hath not laid an Indebitatus, or a
 Mutuatus, as he well might have done. For
 which see the former Precedents.

*A Declaration in Case on a Special Con-
 tract to deliver 500*l.* 3*d.* Subscription to
 the South-Sea Company, where Part of
 the Contract-Money was paid afterwards.*

London, to wit. *J. B.* late of London, Mer-
 chant, and *E. B.* late of
 the same, Merchant, were attached to an-
 swer *R. D.* of a Plea of Trespass on the Case,
 and whereupon the said *R.* by *A. B.* his At-

In C. B.
 Case for not
 delivering
 South-Sea
 Subscriptions
 according to
 Agreement.
 Lilly's Ent.
 35.

South Sea. torney complains, That whereas he the said R. on the 4th Day of *May* in the Year of our Lord —, at *London* aforesaid, in the Parish of *St. Peter's the Poor* in the Ward of *Broad-street, London*, had paid 500*l.* by him before that Time subscribed, on the third Subscription of the Governor and Company of the Merchants of *Great Britain* trading to the *South-Sea*, and other Parts of *America*, and for promoting the Fishery, &c. And also whereas, afterwards, to wit, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, it was agreed between the said J. and E. and the said R. That the said R. upon Payment of 1500*l.* with Interest after the Rate of 5*l.* for every 100*l.* yearly for the same, from the Day of that Agreement, should deliver to the said J. and E. the said 500*l.* third Subscription of the Governor and Company aforesaid, and that the said J. and E. should pay on the aforesaid R.'s Delivery of the said 500*l.* third Subscription that said Sum of 1500*l.* of lawful Money of *Great Britain* to the same R. with Interest for the same, after the Rate of 5*l.* in the Hundred, yearly, from the Day of the Agreement above-said, and that the said J. and E. should allow and pay all future Demands upon the aforesaid 500*l.* Subscription: And thereupon the same J. and E. afterwards, to wit, on the said 5th Day of *July* in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration that the said R. had then and there at the special Instance and Request of them J. and E. undertaken, and to them J. and E. then and there faithfully promised to perform all and singular the
Matters

Matters and Things in the Agreement contained on the Part of him R. to be performed, they the said J. and E. did undertake, and unto the same R. then and there faithfully promised, that they the same J. and E. would well and faithfully perform the said Agreement in all Things on their Parts to be perform'd; And the said R. in Fact saith, That afterwards, to wit, on the 10th Day of April in the Year of the Lord 1721, at London aforesaid, in the Parish and Ward aforesaid, he the said R. delivered to the said J. and E. the aforesaid 500 l. third Subscription aforesaid; yet they the aforesaid J. and E. not regarding their Promises and Undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same R. in this Particular, have not paid, or caused to be paid, nor hath either of them paid, or caused to be paid, the aforesaid Sum of 1500 l. with such Interest for the same as aforesaid, nor any Penny thereof, according to the Form and Effect of the Agreement aforesaid; although they the said J. and E. afterwards, to wit, on the same Day and Year, and often afterwards, at London aforesaid, in the Parish and Ward aforesaid, were requested by him R. to do the same, but they the said J. and E. and each of them have refused, and still do refuse to pay, or cause the same to be paid to him: And also whereas afterwards, to wit, on the 5th Day of July in the Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, the said R. had at the like Instance and Request of them the said J. and E. bargain'd and sold unto the

Breach of the Agreement.

Laid another Way.

South Sea. aforeſaid J. and E. another 500*l.* third Subscription of the aforeſaid Company for 1500*l.* of like lawful Money with Interest for the ſame from the Day of that Bargain and Sale, payable after the Rate of 5*l.* by the Hundred yearly, in Conſideration thereof, and in Conſideration that the ſaid R. had undertaken, and unto the ſaid J. and E. faithfully promiſed to deliver to the ſaid J. and E. the aforeſaid third Subscription of the aforeſaid Company, they the ſaid J. and E. afterwards to wit, on the ſame Day and Year laſt aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook, and unto the ſaid R. then and there faithfully promiſed, That they the ſaid J. and E. would pay unto the ſaid R. the ſaid Sum of 1500*l.* laſt mentioned, with Interest for the ſame, from the Day of that Bargain and Sale, upon the aforeſaid R.'s delivering unto them the ſaid other 500*l.* third Subscription of the ſaid Company: And the ſame R. in Fact ſaith, That afterwards, to wit, on the 26th Day of *May* in the Year of the Lord 1721 aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, he the ſaid R. did deliver unto the ſaid J. and E. the ſaid laſt mentioned 500*l.* third Subscription of the ſaid Company; yet the aforeſaid J. and E. or either of them have not paid, or cauſed to be paid, the ſaid Sum of 1500*l.* laſt mentioned, with ſuch Interest for the ſame as aforeſaid, or any Penny thereof, although they the ſaid J. and E. (*were afterwards, &c. requested as above.*) And alſo whereas the ſaid J. and E. afterwards, to wit, the 5th Day of *July* in the Year of the Lord 1720, at *London* aforeſaid, in the Pariſh

Agreement.

Breach.

Laid another Way.

rish and Ward aforesaid, in Consideration that the aforesaid R. had at their like special Instance and Request sold to them the said J. and E. another 500*l.* third Subscription of the said Company; and in Consideration that the aforesaid R. had undertaken, and unto the same J. and E. faithfully promised to deliver unto them the said J. and E. another 500*l.* third Subscription of the said Company, subscribed by him R. and in Consideration that the said R. had undertaken, and unto the same J. and E. faithfully promised to deliver unto the said J. and E. the said last mentioned 500*l.* Subscription, they the said J. and E. undertook, and unto the same R. then and there faithfully promised, That they the said J. and E. would well and faithfully pay and content unto the said R. another Sum of 1500*l.* of like lawful Money with Interest for the same, from the Day of that Sale, upon the said R.'s delivering of the said 500*l.* Subscription last mentioned; And the said R. in Fact, saith, That at a General Court of the said Company, held on the 18th Day of *May* in the 7th Year of the Reign of the Lord the now King, it was ordered, That the Stock of the said Governor and Company should immediately be given for Payment, upon the third Subscription aforesaid, after the Rate of 400*l.* for every 100*l.* thereof, with the Dividend at the Feast of the Nativity of St. *John* the Baptist, otherwise called the *Midsummer* Dividend, and that the said Dividend should be 10*l.* for every 100*l.* thereof in the Stock of the same Company, whereof they the said J. and E. afterwards, to wit, the same Day and Year,

Averment.

South Sea. at London, &c. in the Parish and Ward aforesaid, had Notice: And the aforesaid R. doth further in Fact say, That afterwards, to wit, the 27th Day of *A.* in the said 7th Year of the Reign of the said Lord the now King, at London aforesaid, in the Parish and Ward aforesaid, at the House of the Governor and Company aforesaid, called the *South-Sea* House, being in the aforesaid Parish and Ward from the Hour of Ten till the Hour of Twelve of the same (they the said *J.* and *E.* having Notice thereof before then given to them by the said R. that they might be ready at the Place and Time aforesaid, to claim and receive the Stock for the said last mentioned 500*l.* third Subscription of the said Governor and Company to be allowed) and the said R. continually remained there, and by the whole Time aforesaid was there ready, and offered to deliver unto the said *J.* and *E.* the said 500*l.* third Subscription so subscribed by him R. and to transfer to the said *J.* and *E.* all such Stock, and other Benefit as was or should be given or allowed for the said last mentioned 500*l.* subscribed by him R. into the third Subscription aforesaid; and they the aforesaid *J.* and *E.* then and there might have claimed, and have had the said 500*l.* Subscription last mentioned: Yet they the said *J.* and *E.* or either of them, or any other Person for them, or either of them, did not then and there come to accept or claim the said last mentioned 500*l.* third Subscription aforesaid or to accept the Stock or other Benefit, which by the Governor and Company aforesaid, was or might be given or allowed for the said 500*l.* in Money paid by the

Further Averment.

'Tis not shewn upon the Notice was given.

Breach.

the aforesaid R. into the said third Subscription; but they the said J. and E. and each of them have altogether refused to accept the said last mentioned 500 l. third Subscription aforesaid, or such Stock and other Benefit as should be given or allowed for the same by the Governors and Company aforesaid: Yet the aforesaid J. and E. or either of them, at that Time, or at any other Time hitherto have not paid or caused to be paid the aforesaid 1500 l. last mentioned, or any Penny thereof, to the said R. although they the said J. and E. were by him R. afterwards, to wit, the same Day and Year, and oftentimes afterwards, at London aforesaid, in the Parish and Ward aforesaid, required to do it, but they the said J. and E. have hitherto altogether refused and still do refuse to pay, or cause the same to be paid, to him the said R. to the Damage of him the said R. 1600 l. And thereupon he brings this Suit, &c.

A Declaration in Assumpsit by an Executrix, for not transferring South-Sea Stock according to a Contract with the Testator.

London, to wit. **A**. M. late of London, Knt. In C. B. For
 was attached to an- not delivering
 fwer to M. J. Widow, Executrix of the Tes- South-Sea
 tament and Last Will of N. J. her late Hus- Stock.
 band deceased, of a Plea of Trespass on the See Lilly's
 Case; and whereupon she the said M. by E. Ent. 42.
 complains, That whereas the aforesaid M. on
 &c. at, &c. in Consideration that the afore-
 said N. had in his Life-time then and there,
 at

South Sea. at the special Instance and Request of the said *A.* paid to the said *A.* to the Use of the said *N.* the Sum of 118*l.* 11*s.* 5*d.* of lawful Money of *Great Britain*, undertook, and unto the said *N.* in his Life-time faithfully promised, That he the said *A.* would transfer to the said *N.* 118*l.* 11*s.* 5*d.* of the Capital Stock in the Company trading to the *South-Seas* in *America*, commonly called the *South-Sea* Company, with all the Dividends for the same, when he the said *A.* should be afterwards thereunto required: Yet he the said *A.* not regarding his said Promise and Undertaking so made in the Form aforesaid, but contriving and fraudulently intending the said *N.* in his Life-time, and the said *M.* since his Death, to deceive and defraud in this Particular, hath not transferred to the said *N.* in his Life-time, nor to the said *M.* since his Death, the aforesaid 118*l.* 11*s.* 5*d.* of the aforesaid Capital Stock in the Company aforesaid, nor any Part thereof, although the said *A.* was requested to transfer the same Stock to the said *N.* by the said *N.* in his Life-time, to wit, the Day and Year aforesaid, at *London* aforesaid, to wit, in the Parish and Ward aforesaid: And although he the said *A.* since the Death of the said *N.* to wit, on the first Day of *January* in the Year of the Lord 1718, at *London* aforesaid, in the Parish and Ward aforesaid, hath been requested by the said *M.* to transfer the said Stock to her the said *M.* and the said *M.* was then and there ready to receive the said Stock of the said *A.* But he the said *A.* refused to transfer the said Stock to the said *N.* in the Life-time of the said *N.* and since his

Note; this
Averment
seems needless.

his Death hath altogether refused, and still doth refuse to transfer the same to said M. And whereas, &c.

Insurance.

A Declaration in Case upon a Policy of Assurance.

London, to wit. J. N. complains against R. A. for that to wit, That whereas the same J. on, &c. at, &c. had appointed, That divers Wines, Sugars, and other Merchandizes should be provided and bought for the said J. and for the Use of the said J. at the Island of T. in the Parts beyond the Sea, or at some other of the *Fortunate Islands* called the *Canary Islands* in the said Parts beyond the Sea, by the Factor of the said J. N. there residing, as to such Factor of the said J. should seem best, to be transported from the same Island of T. or from some other Island of the said *Fortunate Islands*, unto *London* aforesaid, in a certain Ship called, *The Fortune of London*, to the Use of the said J. And also whereas he the same J. had greatly desired to have all such Wines, Sugars and Merchandizes of him J. or such Parts thereof which were then provided, or should be from thenceforth afterwards provided, and bought by the said Factor of the said J. at the said Island of T. or any of the said *Fortunate Islands*, for the said J. and to his Use, and which then and there were loaded, or should from thenceforth afterwards be loaded in the said Ship, to be transported from the said Island of T. or any Island of the said *Fortunate Islands*, for or towards

In B. R.
Upon a Policy of Assurance.
See Bro. Vade Mecum 69.

Assurance. wards *London* aforesaid, and there to be unloaded, secured and assured to him the said *J.* according to the Custom of Merchants, he the said *J. N.* thereupon, on, &c. at, &c. aforesaid, had Discourse with divers Persons for and concerning the said Assurance, and then and there procured *A. B.* and *C. D.* being Officers of our Lord the now King, in that Behalf, to make a certain Writing called a Policy of Assurance, used among Merchants, to be subscribed by such Person or Persons as would assure any Merchandizes so laden or to be laden, as aforesaid, which said Writing of Assurance follows in these Words; In the Name of God, *Amen.* Be it known unto all Men by these Presents, That *J. N.* of *London*, Merchant, doth make Assurance, and causeth himself to be assured from the Island of *Teneriff*, or any of the Isles of the *Canaries*, upon Wines, Sugars, and other Merchandizes, laden or to be laden in the good Ship called *The Fortune of London*, of the Burthen of 400 Tons, or thereabouts, whereof is Master under God in this present Voyage *J. W.* or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be called, beginning the Adventure from the Day and Hour of the Lading of the said Wines, Sugars, or other Merchandizes aboard the same at the said Island of *Teneriff*, or any other of the Isles of the *Canaries* aforesaid, and so shall continue and endure until such Time as the said Ship, with the same Wines, Sugars, and other Merchandizes, shall be arrived at *London*, and the same there discharged and laid on Land in good Safety. Touching the

Adventures

Freighted.

Form of the Policy.

See hereafter Covenant on a Charter-Party.

Adventures and Perils which we the Assurers hereafter nam'd are contented to bear, and do faithfully promise to take upon us in this present Voyage, they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettezons, Letters of Mart, or Counter Mart, Arrests, Restraints and Detainment of Kings and Princes, and of all Persons, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes, whatsoever they be, or howsoever the same shall chance, happen, or come to the Hurt, Detriment, or Damage of the said Wines, Sugars, &c. or any Part or Parcel thereof; And that in Case of any Misfortune, it shall and may be lawful to the Assured, his Servant, Factor and Assignee, to sue, labour and travel for, in and about the Defence, Safeguard, and Recovery of the said Wines, Sugars, &c. or of any Part or Parcel thereof, without any Prejudice to this Assurance, to the Charges whereof we the Assurers shall contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is to be understood, That this present Writing and Assurance being register'd according to the King's Majesty's Order and Appointment, shall be of as much Force, Strength and Effect, as the best and surest Policy or Writing of Assurance which hath been heretofore used to be made in *Lombard-Street*, or is now made within the *Royal Exchange* in *London*: And so we the Assurers are contented, and do promise and bind ourselves and every of us, our Heirs, Executors and Goods, by these Presents, unto the Assured, his Administrators and Assigns, (*no Sum mentioned*)

Assurance. tioned) for the true Performance of the Premises, submitting ourselves to the Order, Determination, and Judgment of such Merchants as now be, or hereafter shall be sworn and authorized by the Lord Mayor of the City of *London*, for the Time being, for the deciding and ending of Causes of Assurance, confessing ourselves fully satisfied, contented and paid, of and for the Consideration due to us for this Assurance by these Presents, at the Hands of the said *J. N.* after the Rate of 6*l.* in the Hundred. And in Testimony of the Truth, we the said Assurers have hereunto severally subscribed our Names and Sums of Money assured. Given at the Office of Assurance within the *Royal Exchange, London*, (such a Day and Year) made, register'd, and examined, according to his Majesty's Order and Appointment, the ——— Day of *M.* in the Year, *Ec.* And he the aforesaid *R. A.* having executed the said Policy of Assurance as aforesaid, did afterwards, to wit, on the said first Day of *March* in the said ——— Year of the Reign of, *Ec.* aforesaid, in Consideration that the said *J. N.* had undertaken, and to the said *R. A.* then and there promised to pay unto the said *R. A.* when he should be thereunto required, after the Rate of 6*l.* for every 100*l.* Assurance, according to the Usage of Merchants, of any Wines, Sugars, and other Merchandizes of him the said *J. N.* of any Kind or Nature whatsoever, which then were or should afterwards be laden at the said Island of *T.* or any other of the said *Fortunate Islands*, by the aforesaid Factor for the said *J. N.* and to his Use to be transported

ported from thence towards *London* by Sea, as should amount to the said Sum of 25*l.* did undertake, and unto the same *J. N.* did then and there, to wit, the Day and Year last a-bovesaid, at *London* aforesaid, &c. faithfully promise, That if the said Wines, Sugars, &c. then laden, or there afterwards to be laden by the said Factor, on the said Ship, at the said Island of *T.* or at any other of the said *Fortunate Islands*, for *London* as aforesaid, or any Parcel thereof, should happen to be lost, taken, or destroy'd by the Seas, Men of War, Fire, &c. (as in the Policy to) from the Day and Hour of the Lading of the said Wines, Sugars, &c. on board the said Ship, at the said Island of *T.* or any other of the said *Fortunate Islands*, before the said Ship with the said Wines, Sugars, &c. so laden, or to be laden thereon, should be arrived at *London* aforesaid, and before the same Wines, &c. were unladen at *London* aforesaid, and put on Land in good Security, then he the said *R. A.* would well and faithfully pay and content to the said *J. N.* the Sum of 25*l.* when he should be thereto required after such Loss, Taking, or Destruction: And that in Case of any Misfortune, it shall and may be lawful, &c. (as the Policy *supra mutatis mutandis*, to the Words *Royal Exchange, London.*) And for the further Ratification of the said Undertaking and Promise so made by the aforesaid *R. A.* to the said *J. N.* in the Form aforesaid, he the said *R. A.* did on the same 1st Day of *March* in the 6th Year of the Reign, &c. aforesaid, at *London*, &c. subscribe his Name and Consent to the fore-said Writing (Policy) of Assurance in these Words,

Assurance. Words, to wit, I *R. A.* am Content with this Assurance, which God preserve, for the Sum of 25*l.* this first Day of *March, Anno, &c.* and on the same Day, and at the Place aforesaid, he the said *R. A.* acknowledged himself to be satisfy'd of the Consideration aforesaid, so paid to him for his said Undertaking and Assurance as aforesaid; And the aforesaid *J. N.* in Fact

1st Averment.

saith, That the said Writing (Policy) of Assurance was afterwards, to wit, on the 10th Day of *March* in the Year of, *&c.* aforesaid at *London, &c.* made and registred according to the Form of the Order and Appointment of his Majesty King, *&c.* by the said *A. B.* and *C. D.* being the then Officers appointed by his said Majesty in that behalf; And the same *J.*

2^d Averment.

N. in Fact further saith, That before the said Promise and Undertaking so made by the said *R. A.* as aforesaid, and before the Day of the suing out this Bill, to wit, on, *&c.* one *J. W.* was the Factor of him *J. N.* and then resided at the said Island of *Teneriff*, to provide and buy divers Merchandizes within the same Island for the aforesaid *J. N.* and to his the said *J. N.*'s Use, and to lade in the said Ship the same Merchandizes to be transported by Sea from the same Island of *T.* to *London* aforesaid; And the same *J. N.* in Fact

3^d Averment.

further saith, That the said *J. W.* being then the Factor of the said *J. N.* and then residing at the said Island of *T.* in the Parts beyond Sea, did afterwards, to wit, on, *&c.* provide and buy for the said *J. N.* and for the said *N.*'s Use at the same Island of *T.* 32 Pipes of *Canary* Wines, amounting in the whole to the Value of 640 *l.* of lawful Money, *&c.* and on the Day and Year last mentioned

On Policies.

81

Assurance.

caused the said 32 Pipes of Wine to be laded at the said Island of *T.* in the Port of the same Island, in the said Ship, called, &c. to be transported in the same Ship from the said Island of *T.* by Sea to *London* aforesaid, to the Use of the said *J. N.* and that the said Ship did afterwards, to wit, on, &c. depart from the said Port of the said Island of *T.* laden with the said 32 Pipes of *Canary Wines*, of the said *J. N.* and was passing by and upon the Seas in her Voyage towards *London* aforesaid so laden with the said Wine. And the said *J. N.* further in Fact saith, That after the said Lading of the said 32 Pipes of *Canary Wines* of the said *J. N.* so made in the said Ship, in the Form aforesaid, to be transported from the said Island of *T.* to *London* aforesaid, and after the Departing of the said Ship from the said Port of the said Island of *T.* in her said Voyage towards *London* aforesaid, the said Ship being so laden with the said 32 Pipes of the said *J. N.*'s *Canary Wines* as aforesaid, in her Sailing on the High Sea from the said Island of *T.* towards *London* aforesaid, to wit, on, &c. was by the Force of high Winds and great Tempests drowned in the said high Sea, and was then and there cast away, and the said 32 Pipes of *Canary Wines* of the said *J. N.* were then and there wholly lost, before they, or any of them were unladed, discharged at *London* aforesaid, or put on Land in good Security; and that the said *J. N.* afterwards, to wit, on, &c. at, &c. gave Notice to the said *R. A.* of the said Loss: And further the said *J. N.* in Fact saith, That afterwards, to wit, on, &c. *H. P. Knt.* then Lord Mayor of the said City;

4th Averment.

5th Averment.

G

of

Assurance. of London, appointed certain Persons to wit, (seven named) Merchants of the said City of London, and swore and authorized them, or any six, five, or four of them to decide and determine Causes of Assurance, according to the Usage of Merchants used and approved within the same City; and that as well the said J. N. as the said R. A. afterwards, to wit, on, &c. at, &c. submitted themselves to stand to the Order, Determination and Judgment of the aforesaid (seven named) or of any six, five, or four of them, and that they the aforesaid (seven named) Merchants as aforesaid, taking on themselves the Burthen of deciding, and judging the said Cause of Assurance between the said J. and R. did on, &c. at, &c. meet, and had Debate, &c. But neither the said (seven named) nor any six, five or four of them made any Order or Determination in or about the Premises therein, because neither the said seven, nor any six, five, or four of them could agree concerning the same; yet the said R. A. not regarding his said Promise and Assumption, but contriving and fraudulently intending to deceive the Plaintiff of the said 25 l. &c. (as usual) Damages 60 l.

Here Note; Where the like written Agreement or Policy of Assurance is under Hand and Seal, and for Payment of a certain Sum in Cases of the like Loss, an Action of Debt lies. Vide post.

A Decla-

*A Declaration in Assumpsit by the Master
of a Vessel for his Freight.*

London, to wit. **R.** R. late of London, *In C. B. By*
 Merchant, was at- *a Master of a*
 tached to answer to S. P. of a Plea of Tres- *Vessel for*
 pass on the Case; and whereupon the said *Freight.*
 S. P. by T. W. his Attorney complains, That *Lilly 54.*
 whereas the said R. on the first Day of Ja-
 nuary in the second Year of our Lord George
 now King of Great Britain, &c. at London
 aforesaid, in the Parish, &c. in Considerati- *See hereafter.*
 on that the said S. P. had, at the special In- *Tit. Cove-*
 stance and Request of him R. carried and *nants.*
 transported for the same R. divers Goods,
 Wares and Merchandizes in a certain Ship or
 Vessel, called the *John and Catharine* from *Arch-*
angel in the Parts beyond the Sea to London a-
 foresaid, he the aforesaid R. R. did on the Day
 and Year aforesaid, at London aforesaid, in the
 Parish and Ward aforesaid, undertake, and un-
 to the same S. P. then and there faithfully pro-
 mised, That he the aforesaid R. would well
 and faithfully pay and content unto the said
 S. P. all such Sum or Sums of Money as he
 the said S. P. should reasonably deserve for
 the same, when he the said R. R. should be
 thereto afterwards required; And the said S.
 P. in Fact saith, That he did reasonably de- *Averment;*
 serve to have of the said R. R. for the same
 the Sum of 250*l.* of lawful Money of Great
 Britain, to wit, at London aforesaid, in the
 Parish and Ward aforesaid, whereof the afore-
 said R. R. had then and there Notice from
 the said S. P. yet he the said R. contriving
 and

Freight.

and fraudulently intending to deceive and defraud the said S. P. in this Particular, &c. (as usual.)

See Lilly's Entr. Page 53. a Declaration in Assumpsit against the Master of a Vessel by an Executrix, for Wages due to her Husband's Apprentice as Servant to the said Master during an East India Voyage.

A Declaration on an Assumpsit or Promise of a Reward published in the Gazette.

*In B. R. On
a Promise
printed in the
Gazette.
See Meth.
Nov. 6.*

London, to wit. **T**. B. complains of **J. L.** being in the Custody of the Marshal, &c. for that, to wit, That whereas divers Goods and Chattels, to the Value of 400*l.* were such a Day and Year, feloniously taken and carried away by certain Malefactors, and Persons unknown, from the Mansion House of said **J.** situate (in such a Street, &c.) within the said City of **L.** as he the same **J.** caused to be reported and published; he the said **J.** afterwards, to wit, on, &c. at, &c. in which said Parish and Ward the said House is situate, In Consideration that the aforesaid **T. B.** or any other Person, would give Notice or discover to the said **J.** where the said Goods were, so that the same Goods or any Part of the same were restored again, he the said **J.** did undertake, and then and there faithfully promised, That he the said **J.** would well and faithfully pay and satisfy to the Person or Persons so discovering the said Goods the Sum of Twenty Guineas, or proportionable for any Part thereof: And the said **T.** in Fact saith, That he the said **T.**

Adverment.

T. upon Hope of the faithful Performance of the said Promise and Undertaking so made by the said J. as aforesaid, did afterwards, on the third Day of *October* in the Year, *1730*. at *London* aforesaid, in the Parish and Ward and House of the said J. aforesaid, give Notice to the said J. of the greatest Part of the Goods, *&c.* so lost as aforesaid, to wit, of so much of them as came to the Value of *390 l.* so that the same Goods, and of the said Value of *390 l.* did afterwards, to wit, on, *1730*. at, *1730*. by Reason of the said Notice, come to, and were restored again to the Hands and Possession of the said J. whereby the foresaid J. ought, according to his said Promise and Undertaking to have paid to the same T. Nineteen Guineas and an Half in Gold, which then amounted in Value to the Sum of *20 l. 9 s. 6 d.* being a proportionable Part of the Reward in Guineas so promised by the said J. to be by him paid on the Discovery and restoring of the Goods, *&c.* so lost as aforesaid; but he the aforesaid J. not regarding his said Promise and Undertaking so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said T. in that Particular, hath not paid the said Nineteen Guineas and an Half, nor any Part thereof to the said T. nor in any Manner contented him for the same, although he the said J. was afterwards, to wit, on such a Day, *1730*. and often afterwards, to wit, at *London* aforesaid, in the Parish, *&c.* aforesaid, requested by the said T. to do it, but he the said J. hath hitherto wholly refused to pay, *&c.* (*as usual.*)

On Notes.

A Declaration in Case upon a Note for Payment of Money with Interest to the Plaintiff or Order, with several Counts.

In B. R.
For Payment
of Money, and
Interest on a
Note, &c.
See Meth.
Nov. 3^d.

London, to wit. **H.** complains of **G. S.** being in the Custody of the Marshal, &c. for that whereas the aforesaid **G.** on the 4th Day of *July* in the — Year, &c. at *London* aforesaid, in the Parish of *St. Mary le Bowe* in the Ward of *C.* had borrowed and received of the aforesaid **H.** the Sum of 100 *l.* and afterwards, to wit, on the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, had undertaken, and unto the same **H.** then and there faithfully promised to repay the same Sum to the same **H.** or Order upon Demand, together with the Interest for the same for so long Time as it should remain unpaid; and although he the said **H.** did afterwards make no Order for the Payment of the said Sum of 100 *l.* or the Interest thereof, or directed the same 100 *l.* or the Interest thereof, to be paid to any other Person whatsoever, and also, although he the said **H.** after the said Promise and Undertaking made as aforesaid, to wit, on the 4th Day of *August* in the — Year, &c. at *London* aforesaid, in the Parish and Ward aforesaid, did demand of the said **G.** the said Sum of 100 *l.* and the Interest thereof then due; and also, though the legal Interest for the said Sum for the Time the same Sum remained due and unpaid to the said **H.** did then amount

amount to the Sum of 20*l.* so that the same, together with the said 100*l.* did amount to the Sum of 120*l.* which were then due and payable by the said *G.* unto the said *H.* according to the Promise and Undertaking so made by the said *G.* to the said *H.* as aforesaid; yet he the said *G.* not regarding his said Promise and Undertaking so made to the said *H.* in the Form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *H.* in this Particular, hath not paid the said 120*l.* or any Penny thereof, to the said *H.* although afterwards, to wit, on the Day and Year last aforesaid, and often afterwards, at *London* aforesaid, in the Parish and Ward aforesaid, he the said *G.* was by the said *H.* requested to do it; but he the said *G.* did then refuse, and still doth wholly refuse to pay the same to the said *H.* And also whereas the said *G.* 2*d* Count. on the said 4*th* Day of *July* in the ——— Year, &c. aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had received and borrowed of the aforesaid *H.* another Sum of 100*l.* and afterwards, to wit, on the same Day and Year, in the Parish and Ward aforesaid, had in Consideration thereof undertaken, and unto the said *H.* then and there faithfully promised to pay the said other Sum of 100*l.* to the said *H.* or his Order on Demand, together with Interest for the same for so long Time as it should remain unpaid; and although he the said *H.* made no Order afterwards, for or concerning the Payment of the said Sum of 100*l.* last mentioned, or any Interest for the same, to be made to any Person or Persons whatsoever; yet he the

On Notes. said G. contriving and fraudulently intending, &c. (as before.) And also whereas he the said G. on the said 4th Day of July in the Year, &c. first abovesaid, at London aforesaid, in the Parish, &c. had received and borrowed of the aforesaid H. another Sum of 100 l. and afterwards, to wit, on the same Day and Year, at London aforesaid, in the Parish and Ward aforesaid, had in Consideration thereof undertaken, and unto the same H. then and there faithfully promised to pay the same other Sum to the same H. or to his Order upon Demand; and although the same H. made no Order for or concerning the Payment of the same Sum of 100 l. last mentioned to be made to any Person or Persons whatsoever; yet he the said G. contriving and fraudulently intending, &c. (as before.) And also whereas the said G. afterwards, to wit, on the 1st Day of December in the Year, &c. at London aforesaid, in the Parish, &c. was indebted to the same H. in another 100 l. for other Monies before that Time borrowed, and had and received by the said G. of the said H. and being so indebted, he the aforesaid G. afterwards, to wit, on the said 1st Day of December in the Year, &c. to wit, at London aforesaid, in the Parish and Ward aforesaid, in Consideration thereof undertook, &c. as in Declarations of *Indebitatus Assumpsits*, of which hereafter.

3d Count.
4th Count an Indebitatus.

Note the
Exactness of
the following
Precedent in
all its Parts.

To conclude this Head of Declarations in Case, on Bills, Notes and Written Promises, I shall here add the Translation of a Record of a Declaration on Two Promissory Notes (wherein are Six Counts contained) together with the Plea,

Plea, Replication, Demurrer, Writ of Inquiry On Notes. and Judgment therein; and which (if attended to) will give Light to the Forms of many of the subsequent Precedents.

Of Easter Term in the First Year of the Reign of the Lord George the Second, now King of Great Britain, &c. Roll the Forty-first. Ventrīs.

London, to wit. **B**E it remembered; That *In B. R. A Declaration on two Notes with several Counts, viz.*
 heretofore, to wit, in the Term of the *Holy Trinity* last past, came before the Lord the King, at *Westminster*, H. W. by P. H. his Attorney, and brought into the Court of the said Lord the now King then there his certain Bill against T. C. being in the Custody of the Marshal of the *Marshalsea* of the said Lord the King, before the King himself then there, of a Plea of Trespas on the Case; and there are Pledges for the Prosecution, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, — London, to wit, H. W. *1st Count on a Note for 84l.*
 complains of T. C. being in the Custody of the Marshal of the *Marshalsea* of the Lord the King, before the King himself; For that to wit, That whereas the aforesaid T. after the first Day of *May* in the Year of the Lord 1705, to wit, on the 25th Day of *February* in the Year of our Lord —, at *London* aforesaid, to wit, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, made his certain Note in Writing, called a Promissory Note, subscribed with his proper Hand, bearing Date the same Day and Year last mentioned, and then and there delivered the said

On Notes.

Averment.

2d Count In-
simul com-
put. for 84l.

said Note to him the said *H.* by which said
 Note he the same *T.* promised to pay to the
 said *H.* or Order, 84l. at Five Months af-
 ter the Date of that Note, for Value re-
 ceived; and the said *H.* in Fact saith, That
 he the same *H.* hath not at any Time hither-
 to ordered the said 84l. contained in the same
 Note to any other Person whatsoever; by
 Reason of which said Premisses, and also by
 Force of a certain Statute in such Case lately
 made and provided, he the said *T.* was and be-
 came liable, and is still liable to pay unto the
 said *H.* the aforesaid 84l. in same Note contain-
 ed; and being so liable he the said *T.* in Con-
 sideration thereof, afterwards, to wit, on the
 same Day and Year last aforesaid, at *London*
 aforesaid, in the Parish and Ward aforesaid,
 undertook, and to the said *H.* then and there
 faithfully promised to pay to the said *H.* the
 said 84l. according to the Tenor of the same
 Note. And also whereas, afterwards, to wit,
 on the same 25th Day of *February* in the Year
 of the Lord, 83c. last aforesaid, at *London* a-
 fforesaid, in the Parish and Ward aforesaid,
 they the said *H.* and *T.* had accounted to-
 gether of and concerning divers Sums of Mo-
 ney before that Time due and owing by the
 said *T.* to the said *H.* and being then behind
 and unpaid, and upon the said Account, he
 the said *T.* being then and there found in Ar-
 rearage towards the said *H.* in 84l. of law-
 ful Money of *Great Britain*, and being so
 found in Arrearage he the said *T.* afterwards,
 to wit, on the same Day and Year last above-
 said, at *London* aforesaid, in the Parish and
 Ward aforesaid, in Consideration thereof,
 undertook, and unto the said *H.* then and
 there

there faithfully promised, That he the said *T.* would well and faithfully pay unto the said *H.* the aforesaid 84*l.* last mentioned, within five Months then next following:

And also whereas, afterwards, to wit, on the 26th Day of the same Month of *February* in the said Year of our Lord — last a-
Third Count
on a Note for
 55*l.* 16*s.*

bovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, he the said *T.* made another Promissory Note, subscribed with his proper Hand and Name, bearing Date the same Day and Year last abovesaid, and then and there delivered the same Note to the said *H.* by which said other Note he the said *T.* promised to pay to the said *H.* or Order Six Months after the Date of the said Note 55*l.* and 16*s.* for Value received; and the said *H.* in Fact saith, That he the said *H.* hath
Acquitment.

not at any Time hitherto ordered the aforesaid 55*l.* 16*s.* in the said Note contained to be paid to any other Person or Persons whatsoever; by Reason of which said Premises, and also by Force of the said Statute in such Case lately made and provided, he the same *T.* was, and became liable, and still is liable to pay to the said *H.* the said 55*l.* 16*s.* in the said last mentioned Note contained; and being so liable he the said *T.* in Consideration thereof, did afterwards, to wit, on the same Day and Year last abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertake, and to the said *H.* then and there faithfully promised to pay to the said *H.* the said 55*l.* 16*s.* according to the Tenor of the same Note: And also whereas afterwards, to wit, on the same 26th Day of *February* in the said Year of our Lord — last above-
4th Count
In simul
comp. for 55l.
 16*s.*
 said,

5th Count
Indebitatus
Assumpsit
for 139 l. lent and received.

6th Count on a
Mutuatius for
139 l. lent, &c.

On Dates. said, at *London* aforesaid, in the Parish and Ward aforesaid, they the aforesaid *H.* and *T.* accounted together of and concerning divers other Sums of Money before that Time due, &c. [for 55 l. 16 s. as in the former *Insimul computasset* for the 84 l.] And also whereas the said *T.* afterwards, to wit, on, &c. at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the same *H.* in 139 l. 16 s. of like lawful Money of *Great Britain*, for so much Money of the said *H.* before that Time had and received by the said *T.* to the Use of the said *H.* and being so indebted, he the said *T.* afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, undertook, and to the said *H.* then and there faithfully promised, That he the said *T.* would well and faithfully pay and satisfy the said 139 l. 16 s. unto the same *H.* when he should be afterwards thereto required: And also whereas the said *T.* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted unto the said *H.* in another Sum of 139 l. 16 s. of like lawful Money, for so much Money before that Time at the Request of the said *T.* advanced and lent by the said *H.* unto the said *T.* and he the said *T.* being so indebted, in Consideration thereof, afterwards, to wit, on the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and unto the said *H.* &c. promised, That he would well and faithfully pay and satisfy the said 139 l. 16 s. unto

unto the same *H.* when he the said *T.* should be thereto afterwards required; yet he the aforesaid *T.* not regarding his said several Promises and Undertakings so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *H.* in this Particular, hath not yet paid to the said *H.* the said several Sums of Money, or any Penny thereof, nor hitherto in any Manner satisfied him for the same, altho' he the said *T.* was afterwards, to wit, on the 2d Day of *December* in the Year aforesaid, and often afterwards, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, requested by the said *H.* to do it: Wherefore he the said *H.* saith, That he is injured, and hath Damage to the Value of 200*l.* And thereupon he brings this Suit.

On Notes.
Breach of the
Promises.

And now at this Day, to wit, on *Wednesday* next after Fifteen Days of *Easter* in this same Term, until which Day the aforesaid *T.* had Leave to imparl to the foresaid Bill, and then to answer thereto, came before the Lord the now King at *Westminster*, as well the aforesaid *H.* by his Attorney aforesaid, as the aforesaid *T.* by *W. G.* his Attorney, and the said *T.* defends the Force and Injury, when, &c. And saith, That the aforesaid *H.* ought not to have or maintain his Action thereof against him, because he saith, That well and true it is, That he did undertake in Manner and Form as the said *H.* hath above by his Declaration alledged against him: But he the said *T.* further saith, That after the making of the several Promises and Undertakings aforesaid, to wit, on the third Day of *January* in the Year of the Lord 1730 aforesaid,

The Plea.
Other Things
given, and ac-
cepted in Sa-
tisfaction.

Note and Q.
if these Words
are of Use.

On Notes. said, he the said *T.* at *London* aforesaid, to wit, in the Parish of, &c. gave and delivered to the said *H.* 5000 *lb.* Weight of Copper, in full Satisfaction and Discharge of the several Promises and Undertakings aforesaid, and of all the Monies mentioned in the same, which said 5000 *lb.* of Copper he the said *H.* did then and there receive and accept from the said *T.* in full Satisfaction and Discharge of the several Promises and Undertakings aforesaid, and of all the Monies therein mentioned: And this he is ready to verify: Wherefore the said *T.* prays Judgment, whether the said *H.* ought to have or maintain his Action thereof against him.

The Replication.

Protestando.

And the said *H.* saith, That he for any thing by the said *T.* above in Pleading alledged ought not to be barred from having his said Action against him the said *T.* because by protesting that the said *T.* did not deliver to the same *H.* the said 5000 Pounds of Copper in full Satisfaction and Discharge of the several Promises and Undertakings aforesaid, and of all the Monies mentioned in the same, for Plea the said *H.* saith, That he had not, nor did he receive of the aforesaid *T.* the said 5000 Pounds of Copper in full Satisfaction and Discharge of the several Promises and Undertakings aforesaid, and of all the Monies mentioned in the same, in Manner and Form as the same *T.* hath in pleading above alledged: And he prays that this may be inquired by the Country.

Demurrer.

And the aforesaid *T.* saith, That the Plea aforesaid, as it is in Manner and Form above by replying pleaded by the said *H.* and the Matter therein contained, are not sufficient in
Law

On Written Promises.

95

Notes, &c.

Law for him the said *H.* to have his said Action maintained against him the said *T.* To which said Plea the said *T.* hath no Need, nor is he bound by the Law of the Land in any Manner to answer: Wherefore for Default of a sufficient Replication in this Particular the said *T.* prays Judgment as before, and that the aforesaid *H.* may be barr'd from having his Action thereof against him.

And the aforesaid *H.* saith, That the Plea aforesaid by him the said *H.* in Manner and Form above by replying pleaded, and the Matter therein contained, are good and sufficient in Law, for him the said *H.* to have his said Action maintained against him the said *T.* which said Plea, and the Matter therein contained, he the said *H.* is ready to verify and prove as the Court here shall award: And because the aforesaid *T.* hath not answered to that Plea, nor hitherto in any Manner denied the same, he the said *H.* prays Judgment, and his Damages by occasion of the Premises to be adjudged to him: But because the Court of the said Lord the now King here are not yet advised of giving their Judgment of and upon the Premises, a Day is given thereof (thereupon) to the Parties aforesaid (to be) before the Lord the now King at *Westminster*, until (such a Day next after such a Return) for hearing of their Judgment of and upon the said Premises: [*Continuances.*]

Joinder in Demurrer.
Day given for Judgment.

At which Day before the Lord the now King, at *Westminster*, came the Parties aforesaid by their Attorneys aforesaid; whereupon the Record and Matters aforesaid being seen, and by the Court of the said Lord the now King here fully understood, and all and singular

The Entry of the Judgment.

Notes, &c. singular the Premisses being examined, and mature Deliberation had thereupon; for that it seem'd to the Court of the said Lord the now King here, That the Plea aforesaid pleaded by him the said *H.* above in his Replication in Manner and Form aforesaid, and the Matter in the same contained, are good and sufficient in Law for him the said *H.* to have and maintain his Action aforesaid thereupon against him *T.* whereby the said *H.* remains thereof against the aforesaid *T.* wholly undefended; for which the same *H.* ought to recover his Damages by Occasion of the Premisses against the aforesaid *T.* But because it is unknown to the Court of the said Lord the now King here, what Damages the said *H.* hath sustained by Occasion of the Premisses, therefore it is commanded to the Sheriffs of London, that by the Oath of ——— honest and lawful Men of their Bailiwick they diligently inquire what Damages the said *H.* hath sustained, as well by Occasion of the Premisses aforesaid, as for his Charges and Costs by him about his Suit in this particular laid out, and that the Inquisition which they shall take thereupon they send to the Court of the said Lord the now King at Westminster, on Tuesday next after Three Weeks of the Holy Trinity, under their Seals and the Seals of those by whose Oath that Inquisition shall be taken, together with the Writ of the said Lord the now King, to them thereupon, &c. The same Day is given to the said *H. (T.)* there, &c. At which Day before the said Lord the King now here at Westminster came the said *H.* by his Attorney aforesaid, and the said Sheriffs of London, to

Writ of Inquiry.

Note; more than 12 may be on Writs of Inquiry.

Return of the Writ.

wit, G. H. Knt. and R. K. Knt. by Virtue of the Writ of the Lord the King, to them thereupon directed, returned a certain Inquisition taken before them at the Guildhall of the City of London, situate in the Parish of St. Lawrence in the Old Jewry, in the Ward of Cheap, in the same City of London, on, &c. taken by the Oath of twelve good, &c. by which it is found that the said H. hath sustained Damages by Occasion of the Premises aforesaid, besides his Charges and Costs laid out about his Suit in this Particular, to 147 l. 7 s. 6 d. and for those his Charges and Costs to 1 l. 7 s. 4 d. Therefore it is considered, That the aforesaid H. shall recover against the aforesaid T. his Damages aforesaid, assessed by the Jury aforesaid in the Form aforesaid, and also 11 l. 6 s. 2 d. for his Costs and Charges of Increase, by the Court of the said Lord the now King judged unto the same H. by his own Assent; which said Damages in the whole amount to 160 l. And the aforesaid T. is in Mercy, &c.

By Parol.

Damages.

Costs and Judgment finally for the Plaintiff.

The Defendant in Mercy.

But Note; Except it be in Cases of Necessity, especially where there is written Evidence to support them (as in the Case supra) I can't advise the Multiplying of Counts in Declarations.

Of Declarations upon Parol Assumpsits, i. e.
Verbal Promises.

Hitherto of Declarations in Assumpsits raised upon written or printed Promises. I shall now give some Precedents of the like upon verbal expressed Declarations for Non-feasances, on Parol Contracts.

Expressed. *bal Promises, either expressed or implied, where-
in are included all such Matters as fall under the
Head of Non-feasances, viz. Parol Assumpsits,
Indebitatus Assumpsits, Quantum Valerents,
Quantum Meruits, Mutuatus, Infimul com-
putassents, &c. But Note; divers of these
Particulars are often (by way of several Counts)
included in the Declarations on Promissory Notes,
Bills or written Agreements, as may be observed
from the foregoing Precedents.*

*A Declaration on a Parol Assumpsit for
Wines sold, delivered, and with Notes
touching Evidence, &c.*

*In B R.
For Wines, &c.
sold and de-
livered.*

*Lilly's Entr.
14. See Praet.
Reg. 109. 120.*

*Indeb. Ass.
Note; On
this Count the
Plaintiff must
prove the ex-
press Price a-
greed on.*

Middlesex, to wit. **T.** complains of **T.**
M. R. being in the
Custody of the Marshal of the *Marshalsea* of
the Lord the King, before the King himself;
for that, to wit, That whereas the said **T.**
on, &c. at, &c. was indebted to the said **M.**
in 40*l.* of lawful Money of *Great Britain*, for
certain Wines by the said **M.** to the said **T.** and
at his Special Instance and Request before
that Time sold and delivered; and being so
indebted, he the said **T.** in Consideration
thereof, afterwards, to wit, on the same Day
and Year, at, &c. undertook, and unto the
same **M.** then and there faithfully promised,
That he the said **T.** would well and faithfully
pay and content the said 40*l.* with the In-
terest for the same, unto him the said **M.**
when he the said **T.** should be thereto after-
wards required; yet he the aforesaid **T.** not re-
garding his said Promise and Undertaking, but
contriving and fraudulently intending crafti-
ly

On Parol Promises.

99

Expressed.

ly and subtilly to deceive and defraud him the said *M.* of the said 40*l.* with the Interest for the same, hath not yet paid the said 40*l.* with the Interest for the same, unto the said *M.* nor hitherto in any Manner satisfied him for the same, although he the said *T.* afterwards, to wit, on the first Day of *May* in the said — Year, &c. and often afterwards, at *W.* aforesaid, in the County aforesaid, was thereto required by the same *M.* but hath hitherto refused, and still doth refuse to pay him the same: And also whereas he the said *M.* afterwards, to wit, on the first Day of *October* in the Year of, &c. above said, at *Westminster* aforesaid, in the County aforesaid, had at the like special Instance and Request of him the said *T.* sold and delivered to the same *T.* other Wines, he the said *T.* in Consideration thereof, afterwards, to wit, the same Day and Year at *W.* aforesaid, undertook, and unto the said *M.* then and there faithfully promised, That he the said *T.* would well and faithfully pay unto the said *M.* so much Money for the said Wines last mentioned, as he the said *Martin* did reasonably deserve to have for the same, when he the said *T.* should be thereto required: And the said *M.* in Fact saith, That he reasonably deserved to have of the said *T.* for the Wines last mentioned the Sum of 50*l.* of like lawful Money; whereof the said *T.* then and there had Notice: Yet he the aforesaid *T.* not regarding his said Promise and Undertaking last mentioned, but fraudulently intending, &c. hath not paid the said 50*l.* or any Penny thereof to the said *M.* although he hath been often thereto requested by the said

Quantum
valebant, &c.
Note; On this
Count the
Delivery only
need be proved.

Averment.

Expressed. *M.* to wit, &c. but he the said *T.* hath refused, and still doth, &c. to the Damage of him *M.* 50*l.* &c.

A Declaration in Case for Non-Performance of a Parol Contract, for the Delivery of Hops (wherein are mutual Promises.)

In C. B.
On an Agree-
ment to deliver
Hops.
See Lilly's
Entr. 19.

London, to wit. *S.* *A.* late of *C.* in the County of *E.* Yeoman, was attached to answer to *G. T.* of a Plea of Trespass on the Case; and whereupon the said *G.* by *B. T.* his Attorney complains, That whereas on the first Day of *October* in the Year of our Lord 1709, at *London* aforesaid, to wit, in the Parish of *St. Mary le Bowe* in the Ward of *Cheap*, a certain Discourse was had and moved by and between the same *G.* and *S.* of and concerning the buying and selling of Hops; and upon that Discourse it was then and there agreed between them the said *G.* and *S.* That the said *G.* should sell to the same *S.* one Load (that is to say) twenty hundred Weight of Hops, at the Rate of six Pounds in Money for every hundred Weight of Hops; the said Hops to be of the next *Michaelmas* Growth of the said County of *E.* to wit, of the Year 1710, and to be deliver'd in *London*, on or before the Feast of *St. Michael* in the said Year 1710; in Consideration of which said Price and Agreement, he the said *S.* at the Day and Place first mentioned, paid into the Hands of the said *G.* one Shilling: And he the said *S.* on the same Day and Year at *London* aforesaid,

Mutual Promises.

faid, in the Parish and Ward aforesaid, in Consideration that the aforesaid G. had undertaken, and to the same S. then and there faithfully promised, that he the said G. would well and faithfully perform the said Agreement in all Things on his Part to be perform'd, did undertake, and to the said G. then and there faithfully promised, That he the same S. would well and faithfully perform the same Agreement in all Things on his Part to be performed : And the same G. in Fact saith That he the said G. afterwards, to wit, on the first Day of *St. Michael the Archangel* in the Year of our Lord 1710 aforesaid, did bring out of the said County of *Essex*, twenty hundred Weight of Hops, of the then last *Michaelmas* Growth, after the said Agreement, of the said County of *E.* and did deliver those Hops upon the said Feast-Day, at *London* aforesaid, to wit, in a Place there call'd *Leaden-Hall*, in the Parish and Ward aforesaid ; and thereof he the said G. did on the same Day and Year, at the Parish and Ward aforesaid, give Notice to the said S. and the same G. then and there left the said twenty hundred Weight of Hops in the said Place call'd *Leaden-Hall* ; and the said twenty hundred Weight of Hops have there continued from the said Time hitherto, and during all that Time have been always ready to have been taken and carried away by the said S. at his Will and Pleasure : Yet he the aforesaid S. not regarding his Promise and Undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same G. in this Particular, hath altogether refused to receive or

Expressed. accept the said Hops, or in any Manner to pay or satisfy the said G. for the same, according to his Agreement aforesaid, although he hath been by the said G. thereto requested, to wit, on the Day and Year last above-mentioned, at *London* aforesaid, in the Parish and Ward aforesaid; but he the said S. hath hitherto refused, and still doth refuse to receive or accept the said Hops, or in any Manner to pay or satisfy the said S. for the same, to the Damage of him G. 300*l.* And thereupon he brings this Suit, &c.

A Declaration for not performing a Special Agreement to deliver Barley, &c.

*In B. R.
On a Special
Agreement to
deliver Barley,
&c.*

London, to wit. **D.** H. complains of *T. S.* being in the Custody of the Marshal, &c. for that to wit, That whereas on, &c. at, &c. a certain Discourse was had and moved between them [the said *D.* and *T.* of and concerning Barley-Corn, and the Price it then bore: And upon that Discourse so had, as aforesaid, it was then and there agreed between them the said *D.* and *T.* for and concerning the Delivery of 800 Bushels of Barley by the said *D.* unto the aforesaid *T.* at the Price of three Shillings for each Bushel: He the said *D.* did then and there, in Consideration of one Shilling to him then and there given, and deliver'd by the said *T.* undertake, and to the said *T.* then and there faithfully promised, That he the said *D.* would on or before the ——— Day of, &c. at, &c. deliver to the said *T.* 800 Bushels of Barley, &c. well cleansed, and in

in good Condition, at the said Price of three Shillings for every Bushel of the said 800 Bushels of the said Barley, which should be so delivered as aforesaid. And the said *D.* *Expressed.*
Averment. in Fact saith, That on the Day and Year, and at the Place last before mentioned, he the said *D.* did deliver to him the said *T.* the said 800 Bushels of Barley, so well cleansed and in good Condition, as aforesaid, which he the said *T.* did then and there receive and take into his Custody and Possession: And the said *D.* further in Fact saith, That the said 800 Bushels of Barley so deliver'd and received, as aforesaid, did at the said Price of three Shillings for each Bushel, amount in the whole to the Sum of 120*l.* which said Sum of 120*l.* by Occasion of the Premisses became due and payable by the said *T.* unto the same *D.* which said Sum of 120*l.* he the said *T.* did then and there undertake and promise to pay the same unto the said *D.* when he should be afterwards thereunto required; yet he the said *T.* not regarding his Promise and Assumption aforesaid; but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *D.* in that Particular, hath not paid the said 120*l.* nor any Part thereof, to the said *D.* though thereto requested by the said *D.* to wit, at such a Place, at such a Time (*Ec. as usual.*)

Expressed.



Another Declaration against two for not performing a Special Parol Agreement, wherein Special Damages are laid for Breach of the Contract.

In B. R.

*The like with
Special Da-
mages laid
(well drawn.)*

Middlesex, to wit.

A. B. complains of *W.* P. and *F. B.* being in the Custody of the Marshal of the Marshalsea of the Lord the King, before the King himself; for that whereas they the said *W.* and *F.* on, &c. at, &c. had agreed with him the said *A.* to buy of him all such Hides and Skins of all and singular the Oxen, Heifers, Cows and Calves of him the said *A.* which he the said *A.* should from and after the aforesaid — Day of, &c. until the — Day of, &c. then next following, happen to kill and slay, they the said *W.* and *F.* in Consideration thereof, and of one Shilling to them in Hand paid by the said *A.* did undertake, and unto him the said *A. B.* then and there faithfully promised, That they the said *W.* and *F.* would on the Day last mentioned, well and truly pay unto him the said *A.* for every such Hide and Skin, according to the Rates and Prices following (to wit) that is to say, for every Hide or Skin of each such Ox or Heifer so killed and slayed by him the said *A.* within the Time aforesaid, and within the same Time deliver'd to them the said *W.* and *F.* the Sum or Price of three Shillings and Six-pence: And for every Hide or Skin of each such Cow so kill'd and slayed by him the said *A.* within the Time aforesaid, and within the same Time deliver'd to them

them the said *W.* and *F.* the Sum or Price of *Expressed.*
 two Shillings: And for every Dozen of Calves-
 Skins, the said Calves being so killed and
 flay'd, and their Skins delivered to the said
W. and *F.* within the Time aforesaid, the
 Sum or Price of five Shillings. By Reason
 of which said Promise and Undertaking of
 them the said *W.* and *F.* so made in the Form
 aforesaid, he the said *A.* did within the Time
 aforesaid kill and flay 408 Oxen and Heifers,
 53 Cows, and 50 Dozen of Calves; and at
 divers Days and Times within the same Time
 deliver'd to them the said *W.* and *F.* all and
 singular the Hides and Skins of the said Oxen,
 Heifers, Cows and Calves so kill'd and flay'd,
 according to the Form of the Bargain and
 Agreement aforesaid, to wit, at *W.* aforesaid
 in the said County of *M.* the true Value
 and Price of all which said Hides and Skins
 so deliver'd by the said *A.* to the said *W.* and
F. do in the whole amount to the Sum of
 58*l.* 18*s.* and he the said *A.* trusting and
 confiding in the Promises and Assumption of
 them the said *W.* and *F.* and that the said
 Sum of 58*l.* 18*s.* would have been paid to
 him by the said *W.* and *F.* according to the
 Bargain and Agreement aforesaid, had un-
 dertaken, and faithfully promised to one *R.*
B. and to divers other Persons to whom the
 said *A.* was then indebted in the like Sum of
 Money, to pay them their respective Debts:
 Yet they the aforesaid *W.* and *F.* being not
 ignorant of the Premisses, and well knowing
 the said *A.* to have promised the Payment of
 the said Sum of 58*l.* 18*s.* unto the aforesaid
R. B. and such other Persons to whom he
 stood indebted as aforesaid, and contriving,
 and

Expressed.

and fraudulently intending craftily and subtilly to deceive and defraud the said *A.* in that Particular, they the said *W.* and *F.* or either of them, have not hitherto paid the said Sum of 58*l.* 18*s.* or any Penny thereof, unto the said *A.* nor in any Manner contented him for the same, altho' he the said *A.* on, &c. and at, &c. and at divers other Times and Places, requested them, and each of them to do it; but they the said *W.* and *F.* and each of them have refused, and do still refuse to pay the said 58*l.* 18*s.* unto the said *A.* by Reason whereof he the said *A.* hath not been able to keep his said Promise and Day of Payment with the said *R. B.* and others to whom the said *A.* stood indebted as aforesaid; insomuch that he the said *A.* by Reason thereof, is very much hurt in his good Name, Credit and Reputation, and also very much hurt and prejudiced in his Trade, and Business, and Dealings with the same *R. B.* and other honest Tradesmen; and likewise put to great Trouble, Charges and Expences, in defending divers Actions and Suits commenced and prosecuted against the said *A.* for not performing of his Contracts, occasioned by the said *W.* and *F.* not performing their Bargain and Contract so made with the said *A.* as aforesaid; whereof he saith that he is injured, and hath Damage to 140*l.* And thereof he brings this Suit, &c.

A. Decla-

A Declaration by Baron and Feme Executrix, on Assumpsit, for Goods sold and delivered by the Testator, on three Counts; with a Plea in Bar of four Horses delivered and accepted in Satisfaction. Demurrer, and Judgment for the Plaintiff.

Oxford, to wit. **W.** N. late of *H.* in the County aforesaid, Yeoman, was attached to answer to *James L.* and *Jane* his Wife, Executrix of the Testament and last Will of *John L.* deceased, of a Plea of Trespass upon the Case; and whereupon they the said *James* and *Jane*, by *J. R.* their Attorney, complain, That whereas the aforesaid *W.* on the first Day of *January* in the Year of the Lord 1711, at *Burford* in the County aforesaid, was indebted to the aforesaid *John L.* in his Life-time in 58 l. 5 s. of lawful Money of *Great Britain* for 80 Sheep of the said *John* in his Life-time, at the special Instance and Request of the said *W.* before that Time sold and delivered by the said *John* in his Life-time, to the said *W.* And being so indebted he the said *W.* in Consideration thereof, afterwards, to wit, on the same first Day of *January* in the Year aforesaid, at *B.* aforesaid in the County aforesaid, undertook, and unto the said *John* then and then faithfully promised, That he the same *W.* would well and faithfully pay and satisfy the 58 l. 5 s. unto the said *John*, when he should be thereunto afterwards required: And also whereas afterwards, to wit, on the said first Day of *January* in the Year

*In C. B. Hill.
2 Geo. I. Rot.
1179. on a
Promise for
Goods sold and
delivered.*

*1st Count.
Indeb. Assump;*

*2d Count.
Quant. Vale
rent,*

Implied. Year aforesaid, at *B.* aforesaid, in Consideration that the aforesaid *John* had in his Life-time, at the special Instance and Request of him *W.* before that Time sold and deliver'd to the said *W.* other 80 Sheep of the said *John*, he the said *W.* undertook, and then and there to the said *John* in his Life-time faithfully promised, That he the said *W.* would also well and faithfully pay and satisfy to the said *John* so much Money for the said 80 Sheep last mentioned, as the same 80 Sheep were reasonably worth at the Time of the Sale and Delivery of the same to the said *W.* when he the said *W.* should be afterwards thereunto required: And the said *James* and *Jane* in Fact say, That the 80 Sheep last mentioned were worth other 58*l.* 5*s.* of lawful Money of *Great Britain*, to wit, at *B.* aforesaid, whereof the said *W.* then and there had Notice: And also whereas the aforesaid *W.* afterwards, to wit, the same first Day of *January* in the Year aforesaid, at *B.* aforesaid, had accounted together with the aforesaid *John* in his Life-time, of divers Sums of Money to the aforesaid *John* in his Life-time before that Time due and unpaid by the said *W.* And upon that Account he the said *W.* was found in Arrearage towards the said *John* in his Life-time in other 58*l.* 5*s.* of like lawful Money of *Great Britain*; and being so found in Arrearage, he the said *W.* in Consideration thereof, afterwards, to wit, on the same first Day of *January* in the Year aforesaid, at *B.* aforesaid, undertook, and to the aforesaid *John* in his Life-time then and there faithfully promised, That he the said *W.* would well and faithfully pay and satisfy the said 58*l.* 5*s.* un-

Averment.

3d Count.
Infimul

Computasset.

Implied.

to the said *John*, when he should be afterward thereunto required: Yet he the aforesaid *W.* not regarding his said several Promises and Undertakings so made in Form as aforesaid, but contriving and fraudulently intending in this Particular craftily and subtilly to deceive and defraud the said *John* in his Life-time, and the said *James* and *Jane* since the said *John's* Death, hath not paid the said several Sums, nor any Penny thereof, to the said *John* in his Life-time, nor to the said *James* or *Jane*, or either of them, since the said *John's* Death, (although he the said *W.* was afterwards, to wit, on the 20th Day of *January* in the said Year of the Lord 1711, at *B.* aforesaid, by the said *John L.* in his Life, and by the said *James* and *Jane* since the said *John's* Death, to wit, on the first Day of *May* 1714, at *B.* aforesaid, and at divers other Times required to do it) or in any wise satisfied them, or either of them, for the same; but hath altogether refused, and still doth refuse, to pay that Money to them, or in any Manner to content them for the same, to the Damage of them the said *James* and *Jane* 60*l.* And therefore they bring their Suit: And the said *James* and *Jane* bring here into Court the Letters Testamentary of the said *John L.* whereby it appears to the Court here, that the said *Jane* is Executrix of the Testament aforesaid, and has the Administration thereof.

Proffert, &c.

And the aforesaid *W.* by *J. M.* his Attorney comes and defends the Force and Injury, when, &c. and saith, That the aforesaid *J. L.* and *Jane* ought not to have their Action aforesaid against him, because he saith,
That

Plea in Bar.
Delivery and
Acceptance of
four Horses.

Expressed. That after the making of the several Promises and Undertakings aforesaid, to wit, on the second Day of *January* in the second Year of the Reign of the said Lord the now King, at *B.* aforesaid, he the said *W.* did give and deliver to the said *John L.* in his Life, four Horses, in full Satisfaction and Discharge of the several Promises and Undertakings of the aforesaid *W.* which said Horses he the said *J. L.* did in his Life then and there receive and accept from the same *W.* in full Satisfaction and Discharge of the said several Promises and Assumptions of the aforesaid *W.* And this he the said *W.* is ready to aver, whereof he prays Judgment, if the aforesaid *J. L.* and *Jane* ought to have their Action thereof against him.

Replication.

And the aforesaid *James* and *Jane* say, That they, for any thing by the said *W.* before alledg'd, ought not to be barred from having their said Action, because they say, That he the said *W.* did not give or deliver to the same *John L.* in his Life, the four Horses aforesaid, in full Satisfaction and Discharge of the said several Promises and Undertakings of the aforesaid *W.* as the said *W.* hath in Pleading above alledged: And they pray that this may be inquired by the Country.

**Demurrer, and
Judgment pro
Quer.**

To this Replication the Defendant demurred, and the Plaintiff join'd as usual; vide ante. And in Easter Term following Judgment was for the Plaintiff.

Another

On Parol Promises.

III

Expressed.

Another Declaration in Assumpsit for Wares and Merchandizes sold and delivered, (well-drawn.)

London, to wit. **R.** B. late of London, Broker, was attached to answer to R. Froom, of a Plea of Trespass on the Case; and whereupon the same R. F. by R. H. his Attorney, complains, That whereas the aforesaid R. B. on the first Day of May in the third Year of the Reign of our Sovereign Lord George, now King of Great Britain, &c. at London aforesaid, to wit, in the Parish of St. Mary le Bowe in the Ward of Cheap, was indebted to the said R. F. in 600*l.* of lawful Money of Great Britain, for divers Goods, Wares and Merchandizes of the said R. F. by him the said R. F. to the said R. B. and at his special Instance and Request before that Time sold and delivered: And being so indebted, he the said R. B. in Consideration thereof, afterwards, to wit, on the Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook, and to the said R. F. then and there faithfully promised, That he the said R. B. would well and faithfully pay and satisfy the aforesaid 600*l.* unto the said R. F. when he should be afterwards thereto required: And also whereas the aforesaid R. B. afterwards, to wit, on the Day and Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, in Consideration that he the said R. F. had at the special Instance and Request of him R. B. sold and deliver'd

In C. B. Trin.
3 Geo. I. Rot.
319. for
Wares sold,
&c.

1st Count.
An Indebit.
Assump.

2d Count.
A Quantum
valebant.

Expressed. to him R. B. divers other Goods, Wares and Merchandizes, he the aforesaid R. B. on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and unto the said R. F. then and there faithfully promised, That he the said R. B. would well and faithfully pay to the said R. F. all such Sums of Money, as those Goods, Wares and Merchandizes last mentioned were worth at the Time of the Sale and Delivery thereof, when he the said R. B. should be afterwards thereunto required: And the aforesaid R. F. in Fact saith, That the Goods, Wares, and Merchandizes last mentioned, so sold and delivered to the said R. B. were reasonably worth, at the Time of the Sale and Delivery thereof, other 600*l.* of lawful Money of *Great Britain*, whereof the aforesaid R. B. at *London* aforesaid, in the Parish and Ward aforesaid had Notice: And also whereas the aforesaid R. B. afterwards, to wit, on the same Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said R. F. in 200*l.* of like lawful Money of *Great Britain*, for so much Money before that Time advanced and lent by the said R. F. to the said R. B. And being so indebted he the aforesaid R. B. in Consideration thereof, afterwards, to wit, on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and unto the said R. F. then and there faithfully promised, That he the aforesaid R. B. would well and faithfully pay and satisfy the said 200*l.* last mentioned unto the said R. F. when he the said R. B. should be thereunto required: Yet the aforesaid

Averment.

3d Count on a
Mutuatus
for Money lent.

On Batol Promises.

113

Expressed.

said R. B. not regarding his said several Promises and Assumptions so made to the said R. F. in the Form aforesaid; but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. F. &c. as before, *Mutat. Mutand.*

To the above Declaration the Defendant demurred thus:

And the aforesaid R. B. by Charles Bernard his Attorney, comes and defends the Force and Injury, when, &c. and saith, That the Declaration aforesaid, and the Matter in the same contained, are not sufficient in Law for the said R. F. to maintain the having his said Action against him the said R. B. and that he hath no Need, nor is by the Law of the Land bound to answer to that Declaration, made and declared in the Manner and Form aforesaid: And this he is ready to verify: Wherefore for Default of a sufficient Declaration of the said R. F. in this Particular, he the said R. B. prays Judgment; and that the said R. F. may be barred from having his said Action against him.

Demurres to the Declaration.

Note; *The Plaintiff joined in this Demurrer, and on Wednesday July the third 1717, after divers Objections made, the above Declaration was held good in omnibus.*

Implied.

A Declaration on an Indebitatus Assumpsit, &c. for 300 Pieces of Foreign Coin had and received (wherein are 10 Counts.)

*La C.B. Hil.
2 Geo. 1.
Indebitatus
Assumpsit,
&c. for Pieces
of Gold, &c.
with ten
Counts.*

*1st Count In-
debitat. As-
sump. for the
300 Pieces.*

*2d Count.
The same on a
Mutuatus.*

London, to wit. **W** C. late of the City of **Canterbury** in the County of **Kent**, Esq; was attached to answer to **J. D.** of a Plea of Trespass on the Case, and whereupon the same **J.** by **R. H.** his Attorney complains, That whereas the aforesaid **W.** on the 1st Day of *August* in the Year of the Lord 1715, at *London* aforesaid, to wit, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, was indebted to the said **J.** in 300 Pieces of coined Gold, called *French Lewidores*, and *Spanish Pistoles*, being Foreign Money of the Value of 300 *l.* of lawful Money of *Great Britain*, for so much Money before that Time had and received by the said **W.** of the said **J.** for the same **J.** and to his Use and the same **W.** being so indebted; did in Consideration thereof, afterwards, to wit, on the Day and Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertake, and unto the said **J.** then and there faithfully promised, That he the said **W.** would well and faithfully pay and satisfy the aforesaid 300 Pieces of coined Gold to the said **J.** when he the said **W.** should afterwards be thereto required: And also whereas the aforesaid **W.** afterwards, to wit, on the Day and Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the said **J.** in other 300 Pieces of coined Gold called *French Lewidores* and *Spanish*

*nish Pistoles, Foreign Money of the Value of 300*l.* of like Money of Great Britain, for so much Money before that Time advanced and lent by the said J. to the same W. and being so indebted he the aforesaid W. in Consideration thereof, afterwards, &c. (as in the former Count to) requir'd: And also whereas he the aforesaid W. afterwards, to wit, on the Day and Year abovesaid, at London, &c. was indebted to the said J. in 300 Pieces of coined Gold called French Lewidores, Foreign Money of the Value of 300*l.* of like lawful Money of Great Britain, for so much Money before then had and received by the said W. for the said J. and to the said J.'s Use; and he the said W. being so indebted, in Consideration thereof, &c. (as in the first Count.) And also whereas the aforesaid W. afterwards, to wit, (&c. as the second Count for Spanish Pistoles, only omitting French Lewidores.) And also whereas the aforesaid W. afterwards, to wit, on the Day, &c. (as above to) indebted to the said J. in 300 Pieces of coined Silver, called Duckettoons, being Foreign Money of the Value of 300*l.* of like lawful Money of Great Britain, for so much Money before then had and received by the same W. for the same J. and to the Use of the said J. and being so indebted he the said W. in Consideration thereof, afterwards, to wit, on the Day and Year abovesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook, and to the said J. then and there faithfully promised, &c. (as before) to pay the said 300 Pieces of coined Silver when required: And also whereas the aforesaid W. afterwards, to wit, on the Day and Year abovesaid, at Lon-*

Implied.

3d Count.
Money had and
received.4th Count. A
Mutuatus.5 Count. In-
debitat. As-
sump. for 300
Duckettoons.6th Count. A
Mutuatus for
the same.

Implied.

don aforeſaid, in the Pariſh and Ward aforeſaid, was indebted to the ſaid *J.* in other 300 Pieces of coined Silver called *Duckettoons*, being Foreign Money of the Value of 300*l.* of like lawful Money of *Great Britain*, for ſo much Money before that Time advanced and lent by the ſaid *J.* to the ſaid *W.* and he the ſaid *W.* being ſo indebted, afterwards, to wit, the Day and Year aforeſaid, &c. promiſed to pay the ſaid 300 *Duckettoons*, &c. (as above.) And alſo whereas the ſaid *W.* afterwards, to wit, on the Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, was indebted to the ſaid *J.* in 300*l.* of lawful Money of *Great Britain*, for ſo much Money by the ſaid *W.* for the ſaid *J.* and for the Uſe of the ſaid *J.* before that Time had and received, he the ſaid *W.* being ſo indebted, in Conſideration thereof afterwards, to wit, on the Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook, and to the ſaid *J.* then and there faithfully promiſed, That he the ſaid *W.* would well and faithfully pay the ſaid 300*l.* laſt mentioned unto the ſaid *J.* when he ſhould be thereto afterwards required: And alſo whereas the ſaid *W.* afterwards, to wit, the Day and Year, &c. at *London*, &c. was indebted to the ſaid *J.* in other 300 Pieces of coined Silver called *Spaniſh Crowns* of Foreign Money of the Value of 100*l.* of lawful Money of *Great Britain*, for ſo much Money by the ſaid *W.* for the ſaid *J.* and to the Uſe of the ſaid *J.* before that Time had and received; and being ſo indebted he the ſaid *W.* in Conſideration thereof, afterwards, to wit, on the Day and Year

7th Count, In-
deb. Aſſump.
for 300*l.*

8th Count.
For 300 Spa-
niſh Crowns
received to Uſe.

On Parol Promises.

117

Implied.

Year aforesaid, at *London* aforesaid, &c. undertook, &c. to pay the said 300 Pieces of coined Silver, &c. (as before.) And also whereas the aforesaid *W.* afterwards, &c. was indebted to the said *J.* in other 300 Pieces of coined Silver called *Florins* of Foreign Money of the Value of 100 *l.* of lawful Money of *Great Britain*, for so much Money by the said *W.* for the said *J.* &c. (as the foregoing, Mutat. mutand.) And also whereas the aforesaid *W.* afterwards, &c. was indebted to the said *J.* in other 300 Pieces of coined Silver, called *Florins*, of Foreign Money, of the Value of 100 *l.* of lawful Money of *Great Britain*, for so much Money by the said *J.* unto the same *W.* before that Time advanced and lent; and being so indebted he the said *W.* in Consideration thereof, afterwards, to wit, on the Day and Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, &c. (as before) with the usual Conclusion of not having paid and refusing to pay, &c.

9th Count.

For 300 Florins so received.

10th Count.

For the same lent, &c.

To this Declaration the Defendant pleaded *Non Assumpsit infra sex Annos*, and the Plaintiff reply'd, that the Defendant was beyond Sea till within three Years; to which the Defendant demurred, &c. and on Argument, *Monday April 23, 1716*, Judgment was for the Plaintiff.

Implied.

*A Declaration on an Indebitatus Assumpsit,
with Five Counts, i. e. for Money laid
out, Work done, Goods sold, &c.*

In C. B. For
Money laid
out, and Work
done, &c.
Mich. 4.
Geo. 1.

1st Count.
For Money
laid out.

2d Count. For
Work done,
and Journeys
made.

Devon, to wit. **S.** late of London, Merchant,
was attached to answer
to **J. B.** of a Plea of Trespass on the Case,
and whereupon the said **J.** by **R. B.** his At-
torney complains, That whereas the aforesaid
S. on, &c. at *Dartmouth* in the County of
D. aforesaid, was indebted to the said **J.** in
40*l.* of lawful Money of *Great Britain*, for
so much Money laid out and expended by
the said **J.** for the said **S.** and at his Special
Instance and Request; and he the said **S.** be-
ing so indebted, in Consideration thereof, af-
terwards, to wit, on the same Day and Year
abovesaid, at *D.* aforesaid in the County a-
foresaid, undertook, and unto the said **J.** then
and there faithfully promised, That he would
well and faithfully pay the said 40*l.* unto the
said **J. B.** when he should be thereto after-
wards required: And also whereas the said **S.**
afterwards, to wit, the same Day and Year
abovesaid, at *D.* aforesaid, was indebted to
the said **J.** in other 40*l.* of like lawful Mo-
ney of *Great Britain*, as well for the Work
and Labour of him **J.** before that Time done
and performed by him the said **J.** for the
said **S.** and at his Special Instance and Re-
quest, as also for divers Journeys of him the
said **J.** before the same Time also done and
perform'd by him the said **J.** for the said **S.**
and likewise at his Special Instance and Re-
quest; and being so indebted he the said **S.** in
Consideration

On Parol Promises

119

Consideration thereof, afterwards, to wit, on the same Day and Year abovesaid, undertook, &c. to pay and satisfy the said 40*l.* last mentioned, (*&c. as the First Count.*) And also whereas the aforesaid *S.* afterwards, to wit, on the same Day, &c. at *Dartmouth* aforesaid, in Consideration, That the aforesaid *J.* had at the like Special Instance and Request of the said *S.* before that Time made, done and performed, as well other Work and Labour, as other Journeys for the same *S.* undertook, &c. that he the said *S.* would well and faithfully pay and satisfy unto the said *J.* so much Money as he the said *J.* had reasonably deserved to have for the same, when he the said *S.* should be afterwards thereto required; and the said *J.* in Fact saith, That he reasonably deserved to have of the said *S.* for the same, other 40*l.* of like lawful Money, to wit, at *D.* aforesaid, whereof the said *S.* then and there had Notice: And also whereas the aforesaid *S.* afterwards, to wit, on the the same Day and Year abovesaid, at *D.* aforesaid, was indebted to the said *J.* in other 40*l.* of like lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes to the same *S.* by the aforesaid *J.* before that Time sold and delivered; and being so thereof indebted he the said *S.* in Consideration thereof, afterwards, to wit, the Day and Year abovesaid, at *D.* aforesaid, undertook, &c. to pay and satisfy the said other 40*l.* &c. (*as before.*) And also whereas he the aforesaid *S.* afterwards, to wit, on, &c. in the Year aforesaid, at *D.* aforesaid, in Consideration that the said *J.* had at the Special Instance and

Implied.

3d Count. On a Quantum Meruit, for his Journeys.

Averment.

4th Count. For Goods sold, &c.

5th Count. A Quantum Valebant Note.

Implied. Request of the aforesaid *S.* before that Time sold and delivered to the said *S.* divers other Goods, Wares and Merchandizes, undertook, and to the said *J.* then and there faithfully promised, That he the said *S.* would also well and faithfully pay and satisfy to the said *J.* so much Money as the said Goods, Wares and Merchandizes last mentioned, were reasonably worth at the Time of the Sale and Delivery thereof, when he the said *S.* should be afterwards thereto required: And the said *J.* in Fact saith, That the said Goods, Wares and Merchandizes last mentioned, were reasonably worth at the Time of the said Sale and Delivery, other 40*l.* of like lawful Money of Great Britain, to wit, at Dartmouth aforesaid, whereof the said *J.* then and there had Notice; yet he the aforesaid *S.* not regarding his said several Promises and Undertakings so made to the said *J.* as aforesaid; but contriving and fraudulently intending, &c. (as usual.)

Averment,

To this Declaration there was a Special Plea, which, being curious in its Kind, I shall here insert.

A Special Plea pleaded.

Note; this Plea Non Assumpsit, and Issue on the 4th and 5th Promises, and a former Judgment in Bar of the 1st, 2d, and 3d Promises.

AND the aforesaid *S.* by *E. C.* his Attorney, comes and defends the Force and Injury, when, &c. (See before.) And as to the third, fourth and fifth Promises and Undertakings aforesaid, in the Declaration aforesaid above-mentioned, the said *S.* saith, That he the same *S.* did not undertake in Manner and Form as the aforesaid *J.* doth above thereof declare against him: And of this he puts himself upon the Country, and the afore-

On Parol Promises.

121

Implied.

aforesaid J. likewise, &c. And as to the first, second and third Promises and Undertakings in the Declaration aforesaid above-mentioned, he the same S. saith, That the said J. ought not to have his Action thereof against him, because he saith, That the said J. did heretofore, to wit, in *Hilary* Term in the first Year of the Reign of our Lord G. now King of *Great Britain*, &c. in the Court of the said now Lord the King, of the Bench, before the Justices of that Court, the same Court being then at *Westminster* in the County of *Middlesex*, implead the same S. by the Name of S. C. then late of *London*, Merchant, of a Plea of *Trespass* on the Case, and the same S. then and there appearing in the same Court by E. C. his Attorney, he the aforesaid J. by R. B. his then Attorney, by declaring complain'd, That whereas the aforesaid S. on the first Day of *July* in the Year of the Lord 1721, at *Dartmouth* in the County of D. aforesaid, was indebted to the same J. in 35 *l.* and 14 *s.* of lawful Money of *Great Britain*, for so much Money by the said J. for the same S. and at his Special Instance and Request, before that Time expended and laid out; and being so indebted the aforesaid S. afterwards, to wit, on the Day and Year aforesaid, at D. aforesaid, in Consideration thereof, undertook, and unto the same J. then and there faithfully promised, That he the aforesaid S. would well and faithfully pay and satisfy to the said J. the said 35 *l.* and 14 *s.* when he the said S. should be thereof afterwards required: And also whereas the aforesaid S. afterwards, to wit, the same Day and Year aforesaid, at D. aforesaid,

Recital of the former Declaration.

Implied.

was indebted to the said J. in other 35 l. and 14s. of like lawful Money of *Great Britain*, as well for the Work and Labour of him J. by him J. for the said S. and at his special Instance and Request, before that Time done and performed, as also for divers Journeys of him the said J. by the said J. for the said S. and also at his special Instance and Request before that Time made and performed; and being so indebted he the said S. in Consideration thereof, on the same Day and Year aforesaid, at D. aforesaid, undertook, &c. to pay the said last mentioned 35 l. and 14s. &c. (*as usual; with the usual Conclusion of Non-payment, Demand, &c.*) Wherefore he then said he was the worse, and had Damage to the Value of 50 l. And thereof he then brought his Suit: And the said S. by the aforesaid E. C. his then Attorney came and defended the Force and Injury, when, &c. and then said, That he did not undertake in Manner and Form as the aforesaid J. had above against him then complained: And thereof he puts himself upon the Country, and the aforesaid J. likewise, &c. Therefore it was then commanded to the Sheriff, that he should cause to come here in the Octave of the Purification of the blessed Mary, Twelve, &c. (*as in the Habeas Corpus Jurator*) *whereto add:* And be it known, that the Justices there in Court in that same Term delivered a Writ thereof to the Deputy Sheriff of the County aforesaid, to be executed in Form of Law; and afterwards, to wit, on, &c. before J. P. Knight, one of the Justices of the said Lord the now King, assigned to hold Pleas before the King himself,

Plea Non Assump.

Hab. Corp. Jurator.

Postea.

On Parol Promises.

123

Implied.

self, and *James Mountague*, Knt. one of the Barons of the *Exchequer* of the said Lord the now King, being the then Justices of the said Lord the now King, assigned to take Assizes in the said County of *D.* by the Form of the Statute, came as well the aforesaid *J. B.* as the said *S. C.* by their Attorneys, and the Jurors of the Jury, whereof Mention is made in the same Record, being demanded also came; and the said Jurors being then chosen, tried and sworn to say the Truth of the Matters in Issue in the same Record also contained, did then say upon their Oath, That the said *S. C.* did not undertake in Manner and Form as the said *J.* had in the same Record of *Nisi Prius* in pleading alledged; and thereupon such was the Process of the said Court of the said Lord the now King, of the Bench here at *Westminster*, That afterwards, to wit, in this present Term of *St. Hilary* in the third Year of the Reign of the said Lord the now King, it was considered by the same Court, That the aforesaid *J.* should take nothing by his Writ, but should be amerced for his false Clamour, and that the said *S.* should thereof go without Day, as by the Record thereof aforesaid, being in the said Court of the said Lord the now King of the Bench, before the Justices of the same Court, the same Court being now at *Westminster* in the County of *Middlesex* aforesaid, doth more fully appear: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *J.* ought to have his Action thereof against him, with this, that the said *S.* will verify, That the said first Promise and Undertaking in the said Declaration of the said

Former Verdict,

And Judgment.

J.

Implied.

¶ in the Record of the Judgment aforesaid mentioned, and the said first Promise and Assumption in the said Writ and Declaration of the said J. against him S. in the Court here now depending mentioned, are one and the same, and for one and the same Cause of Action, and not for other or different Causes of Action (*with the like Averments, severally upon the second and third Promises;*) And that the said S. in the Writ and Declaration of the aforesaid J. against the said S. now depending in the Court here, and the said S. C. named Defendant in the Record of the Judgment aforesaid, are one and the same, and not other or different Persons: And also that the aforesaid J. now Plaintiff, and the aforesaid J. named Plaintiff in the Record of the Judgment aforesaid, are one and the same Person, and not other or different Persons.

*Demurver to
the Plea.*

And the said J. saith, That the Plea of the said S. as to the first, second and third Promises and Undertakings aforesaid, in the Declaration aforesaid above-mentioned, above pleaded in Bar, and the Matters therein contained, are not sufficient in Law to bar the said J. from having his said Action thereof against him the aforesaid S. and that he hath no Need, nor is he bound by the Law of the Land to answer to that Plea in Manner and Form aforesaid pleaded: And this he is ready to verify: Wherefore for Default of a sufficient Plea in this Particular, the said J. prays Judgment, and his Damages to be adjudged to him by Occasion of the not performing of the said first, second and third Promises.

And

On Parol Promises.

125

And the aforesaid S. for that he hath above in pleading alledged sufficient Matter in Law to bar the said J. from having his said Action thereof against him the said S. as to the said first, second and third Promises and Undertakings in the said Declaration above-mentioned, which he is ready to verify, which said Matter the said J. doth not deny, nor any Way answer thereto, but altogether refuses to admit that Verification thereof, he as before prays Judgment, and that the aforesaid J. as to the first, second and third Promises and Undertakings in the said Declaration above-mentioned, may be barred from having his said Action thereof against him S.

Implied.

Joinder in Demurrer.

Note; The above Record being of a curious Nature, I have thought fit to insert intire, whereby the Order, Method and Connection of its several Parts will be the more clearly seen; and the whole be better apprehended than if distributed under the several Heads of Pleas, Replications, Demurrers, &c. and for the same Reason I shall here insert the following Record of,

A Declaration in Assumpsit, &c. (on four Counts) against Husband and his Wife, as Executrix, who plead the Statute of Limitations, to which the Plaintiff Demurs.

Wiltshire, to wit. J. P. late of, &c. in the said County of W. and E. his Wife, Executrix of the Testament

In C. B.

Against Husband and Wife as Executrix, &c. Mich. 4 of Geo. 1.

Implied.

*1st Count, for
Money laid
out.*

*2d Count, for
Money paid
to his Use, &c.*

*3d Count, for
Money had
and received
to the Plain-
tiff's Use.*

of *H. H.* her late Husband deceased, were attached to answer to *W. P.* of a Plea of Trespas on the Case; and whereupon the said *W.* by *F. S.* his Attorney complains, That whereas the said *H.* in his Life, to wit, on the 10th Day of *J.* in the Year of the Lord 1716, at *H.* in the said County, was indebted to the said *W.* in 7*l.* 10*s.* of lawful Money of *Great Britain*, for so much Money for the said *H.* in his Life-time, and at his Special Instance and Request, by the said *W.* before that Time laid out and expended; and being so indebted he the aforesaid *H.* in his Life, in Consideration thereof, afterwards, to wit, on the Day and Year aforesaid, at *H.* aforesaid, undertook, &c. (*as usual.*) And also whereas he the said *H.* in his Life-time, afterwards, to wit, on the said 10th Day, &c. at *H.* aforesaid, was indebted to the said *W.* in other 7*l.* 10*s.* of like lawful Money of *Great Britain*, for divers Sums of Money by the said *W.* to the said *H.* in his Life-time to his Use, and at his Special Instance and Request, before that Time paid and advanced; and being so indebted he the said *H.* in his Life, afterwards, to wit, on the same Day and Year at *H.* aforesaid, in Consideration thereof, undertook, &c. (*as usual.*) And also whereas the said *H.* in his Life, afterwards, to wit, the same Day and Year last mentioned, at *H.* aforesaid, was indebted to the said *W.* in other 7*l.* 10*s.* of lawful Money of *Great Britain*, for so much Money by the aforesaid *H.* in his Life-time, to the Use of him the said *W.* before that Time had and received; and being so thereof indebted he the said *H.* in his Life-time, afterwards, to wit,

On Parol Promises.

127

Implied.

4th Count.

Infimul

Computaffer.

on the Day and Year aforesaid, at *H.* aforesaid, undertook, &c. (*as usual.*) And also whereas the said *H.* in his Life-time, afterwards, to wit, on the same Day and Year aforesaid, at *H.* aforesaid, had accounted with the said *W.* of and concerning divers other Sums of Money to the said *W.* by the said *H.* in his Life-time, before that Time due, and then being in Arrear and unpaid, and upon that Account he the said *H.* was then and there found in Arrearage towards the said *W.* in other 7*l.* 10*s.* of like lawful Money of *Great Britain*; and being so found in Arrearage he the said *H.* in his Life-time, afterwards, to wit, on the same Day and Year, at *H.* aforesaid, in Consideration thereof, undertook, &c. (*as usual.*) Yet the said *H.* in his Life-time, and the said *E.* since his Death, while she was Sole, and also the said *J.* and *E.* after the Intermarriage, not regarding the said several Promises and Undertakings of the said *H.* in his Life-time, so made as aforesaid, but contriving and fraudulently intending craftily, &c. they or either of them have not paid or satisfy'd the said several Sums of Money or any Part thereof to the said *W.* although he the said *H.* in his Life, afterwards, to wit, on the 13th Day of *J.* in the said Year of our Lord 1716, and the said *E.* since his Death, while she was Sole, to wit, on the 26th Day of *March* in the Year of our Lord 1717. and also the said *J.* and *E.* since their Intermarriage, to wit, on the fourth Day of *May* in the said Year of our Lord 1717 aforesaid, were at *Hendon* aforesaid thereto requested by the said *W.* but they and each of them have wholly

Implied. wholly refused to pay or satisfy the same to him, and they the said *J.* and *E.* do still altogether refuse to pay, or in any Manner to satisfy him for the same, to the Damage of him *W.* 30*l.* And thereupon, &c.

Plea Non Assump. infra 6 Annos.

And the aforesaid *J.* and *E.* his Wife, by *H. B.* their Attorney, come and defend the Force and Injury, when, &c. and say, that the aforesaid *H. H.* in his Life-time, at any Time within six Years next before the Day of suing forth the Original Writ of him *W.* did not undertake, in Manner and Form as the said *W.* doth above complain against him: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *W.* ought to have his Action thereof against him.

Demurrer.

And the aforesaid *W.* saith, That the said Plea by the said *J.* and *E.* in Manner and Form above pleaded, and the Matter therein contained, are not sufficient in Law to bar the said *W.* from having his said Action thereof against the aforesaid *J.* and *E.* to which said Plea he the said *W.* hath no Need, nor is he bound by the Law of the Land to answer: And for Cause of Demurrer in Law to that Plea, he the said *W.* according to the Form of the Statute in such Case lately made and provided, shews and demonstrates to the Court here these Causes following, to wit, That it doth not appear in that Plea, upon what Day the Original Writ in that Plea mentioned was sued forth, as it ought to have done, and also for that that Plea is faulty, double, uncertain, and wanteth Form: And this he is ready to verify: Wherefore for Want of a sufficient Plea of the said *J.* and *E.* in this Particular, he the said *W.* prays Judgment

Causes of Demurrer.

Judgment, and his Damages by Occasion of the not performing of the said several Promises and Undertakings, so made by the said *H.* in his Life-time in Form aforesaid, to be adjudg'd to him. *Implied.*

And the aforesaid *J.* and *E.* his Wife, say, *Joinder there- in.* That the said Plea by them *J.* and *E.* in Manner and Form above pleaded, and the Matter therein contained, are good and sufficient in Law to bar him the said *W.* from having his said Action against them the said *J.* and *E.* which said Plea, and the Matter therein contained, they the said *J.* and *E.* are ready to verify and prove, as the Court here shall award: And because the aforesaid *W.* doth not answer to that Plea, nor hath hitherto denied it, they the said *J.* and *E.* pray Judgment as before, and that the aforesaid *W.* be barred from having his Action thereof against them.

And Note; Upon arguing this Demurrer on Wednesday, February the fifth 1717, Judgment was given for the Plaintiff Nisi.

A Declaration on a Quantum Meruit for Work and Labour, &c. and Indebitat. Assump. with a Plea in Bar, &c.

Middlesex, to wit. *J.* P. late of the Parish *in C. B. For* of Stepney, otherwise *Work and La-* *Stebonheath,* in the said County of *Middlesex,* *bour, Hil. 4* Shoemaker, was attached to answer *E. H.* of *Geo. 1. Rot.* a Plea of Trespass on the Case; and where- *369.* upon the said *E.* by *J. K.* his Attorney, complains, That whereas the said *E.* on the first *K* Day

Implied. Day of *October* in the fourth Year of the Reign of our Sovereign Lord George now King of Great Britain, &c. at *Westminster* in the said County of *Middlesex*, had at the special Instance and Request of him the said *J.* done and performed for him *J.* divers Works, Labours and Services, in and about the Business and Affairs of him *J.* he the said *J.* did on the same Day and Year, at *Westminster* aforesaid, in Consideration thereof, undertake, &c. to pay unto the said *E.* all such Sums of Money as he the said *E.* had reasonably deserved to have for his said Work, Labour and Services: And he the said *E.* in Fact saith, That he reasonably deserved to have of the said *J.* for the same Work, Labour and Services, the Sum of 20*l.* of lawful Money of Great Britain, to wit, at *Westminster* aforesaid in the County aforesaid, whereof the said *J.* then and there had Notice: And also whereas, &c. [*i. e. an Indeb. Assump. laid as usual, with the usual Conclusion of a Breach of the Undertakings and Promises.*]

Plea in Bar.

And the aforesaid *J.* by *J. O.* his Attorney comes and defends the Force and Injury, when, &c. and saith, That the said *E.* ought not to have his Action thereof against him, because he saith, That after the several Promises and Undertakings so made as aforesaid, to wit, on the sixth Day of *October* in the fourth Year of the Reign of, &c. at *Westminster* aforesaid in the County aforesaid, he the said *J.* paid to the said *E.* 20*l.* — Which said 20*l.* he the said *E.* did then and there accept in full Satisfaction and Discharge of all the Monies due by the several Promises and Undertakings in the Declaration

On Harol Promises

131

tion of the said *E.* above-mentioned: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *E.* ought to have his Action therefore against him.

Implied.

And the aforesaid *E.* saith, That for any Thing by the said *J.* before alledg'd he ought not to be barred from having his Action aforesaid against the said *J.* because he saith, That the said *J.* did not pay to the said *E.* the aforesaid 20 *l.* in Manner and Form as the aforesaid *J.* hath above by pleading alledg'd: And he prays that this may be inquired by the Country, &c.

Replication.

To this there was a Demurrer and Joinder, Judgment and on Friday, February the seventh 1717, Judgment for the Plaintiff.

A Declaration and Pleadings with the Issue, Verdict, &c. in Case for Money laid out by a Tenant.

Warwick, to wit. T *Savage*, late of *Ratley*, otherwise *Roteley*, in the County aforesaid, Gentleman, was attached to answer to *K. Walker*, Widow, of a Plea of Trespass on the Case; and whereupon the said *K.* by *G. K.* her Attorney complains, That whereas the aforesaid *K.* before the first Day of *July* in the Year of the Lord 1713, had at the proper Charges and Costs of her *K.* sowed divers Quantities of Pease and Vetches in and upon divers Parcels of Land, containing by Estimation 10 Acres, lying in the Common Field of *Ratley*, In C. B. Case for Money laid out by a Tenant. Trin. 1 Geo.

Implied. *ley* aforesaid in the County aforesaid, and had erected divers Hedges and Fences made of Furzes, Thorns, and Brushwood, for Preservation of the said Pease and Vetches while there growing, which said Pease and Vetches were then there growing, to wit, on such a Day, &c. he the said *T.* afterwards, to wit, the same Day and Year last mentioned at *R.* aforesaid, in Consideration that she the said *K.* would at the special Instance and Request of him *T.* permit the said *T.* to cut down and mow the aforesaid Pease and Vetches, and pull up the aforesaid Hedges, and to take and carry away the said Pease and Vetches, and the Wood of the said Hedges and Fences, and to have and dispose of the same to the proper Use of the said *T.* he the said *T.* did undertake, and then and there faithfully promised to the said *K.* that he the said *T.* would well and faithfully pay and satisfy to the said *K.* all such Sums of Money, as she the said *K.* had paid, expended, or laid out, for the Seed of which the said Pease and Vetches were produced; And also all such Sums of Money as the same *K.* had paid, &c. for ploughing of the Land aforesaid, whereupon the said Seed was sown, and for sowing of the said Seed; and for making the Hedges and Fences; and for the Thorns and Wood of which the said Hedges and Fences were made, when he should be thereto afterwards required: And the said *K.* in Fact faith, That she the said *K.* trusting to the Promise and Undertaking of the said *T.* made in the Form aforesaid, did permit the said *T.* to cut down and mow the said Pease and Vetches, and to pull up the said Hedges, and

1st Count.
Quantum
extra posuit,
&c.

1st Averment.

and to take and carry away the same Pease and Vetches, and Wood arising off the said Hedges, and to have and dispose of the same to the proper Use of the said T. And she farther in Fact saith, That she the said K. before the Time of making the Promise and Undertaking aforesaid, had paid and laid out for the Seed of which the said Pease and Vetches were produced, and for sowing of the Seed, and for making the Hedges aforesaid, the Sum of 10*l.* and 1*s.* of lawful Money of *Great Britain*, to wit, at R. aforesaid; and whereof the said T. had Notice, to wit, on the second Day of *June* in the Year aforesaid, at, &c. And also whereas the aforesaid K. afterwards, to wit, on the same Day and Year last mentioned, at R. aforesaid, had at the like special Instance and Request of the said T. sold and deliver'd to the said T. divers other Goods of the said K. and by the said T. had and received, he the said T. in Consideration thereof, did undertake, and unto the said K. then and there faithfully promised, That he the said T. would well and faithfully pay to the said K. so much Money as the said Goods last mentioned were reasonably worth at the Time of the Sale and Delivery thereof, when he should be afterwards thereunto required: And the said K. in Fact saith, That the said Goods last above mentioned were reasonably worth at the Time of the said Sale and Delivery thereof, the Sum of 10*l.* and 1*s.* of like lawful Money of *Great Britain*, to wit, at R. aforesaid; whereof the said T. afterwards, to wit, on the Day and Year last mentioned had there Notice: And also whereas the said T. afterwards, to wit,

Implied.

2d Averment;

2d Count.

For Goods sold, &c.

3d Count.

Ind. Assump.

For Goods sold.

Implied. on the same Day and Year last mentioned, at R. aforesaid, was indebted to the said K. in other 10*l.* and 1*s.* of lawful Money of *Great Britain*, for divers other Goods, Wares, and Merchandizes of her the said K. to the said T. by the said K. at the special Instance and Request of him the said T. before that Time sold and delivered, and by him T. had and received; and being so indebted he the said T. in Consideration thereof, afterwards, to wit, on the same Day and Year last mentioned, at R. aforesaid, did undertake, and unto the same K. then and there faithfully promised, That he the said T. would well and faithfully pay and satisfy the said 10*l.* and 1*s.* unto the said K. when he should be thereto afterwards required: Yet he the said T. not regarding his said several Promises and Undertakings aforesaid, but contriving and fraudulently intending craftily, &c. (*as usual*) to the Damage of her the said K. 30*l.*

Issue and Verdict for the Plaintiff. To this Declaration the Defendant pleads Non Assumpsit, and thereupon at Issue a Verdict is for the Plaintiff.

The Postea whereof is thus:

The Postea.

Afterwards, at the Day and Place within contained, before *Samuel Dodd*, Knt. Chief Baron of the *Exchequer* of the Lord the now King, and *John Prat*, Knt. one of the Justices of the said Lord the now King, assigned to hold Pleas before the King himself, Justices of the said Lord the King, assigned to take the Assizes in the County of *Warwick*, by the Form of the Statute, &c. came as well the within named *K. Walker*, Widow, as the

the within named *T. Savage*, by their Attornies within contained: And the Jurors of the Jury, whereof Mention is within made, being demanded, likewise came, who being chosen, try'd, and sworn to say the Truth of the within contained, do say upon their Oath, That the aforesaid *T. S.* did undertake, in Manner and Form as the aforesaid *K.* doth within complain against him, and they assess the Damages of her the said *K.* by Occasion of the not performing of the Promises and Undertakings within contained, besides her Charges and Costs by her laid out about her Suit in this Particular, to 10*l.* and 1*s.* and for those Costs and Charges to 53*s.* and 4*d.* Therefore, &c.

And here I beg leave to insert a Postea according to the modern Form, viz.

A Postea in Middlesex in Assumpsit, on several (Counts) Promises, one whereof is found for the Plaintiff, and the Residue for the Defendant.

Afterwards, at the Day and Place within contained, before *Robert Lord Raymond*, the Chief Justice within written, *John Smith*, Gentleman, being associated unto him by the Form of the Statute, &c. came as well the within named *R. W.* as the within written *W. R.* by their Attornies within contained; and the Jurors of the Jury, whereof Mention is within made, being demanded likewise came; and being chosen, try'd and sworn to say the Truth of the within contained,

Note; The Form of this Postea was lately settled by the Chief Justice as is said.

Implied,

tained, do, as to the fifth Promise and Undertaking, in the Declaration within written contained, say upon their Oath, *That the said W. R. did undertake in Manner and Form as the aforesaid R. W. doth within declare against him*: And they do assess the Damages of him R. W. by Occasion of the not performing of that Promise and Undertaking, besides the Charges and Costs by him laid out about his Suit in this Particular, to 21 l. 11 s. 11 d. and for those Costs and Charges to 40 s. And as to the Residue of the Promises and Undertakings in the within written Declaration contained, the said Jurors do further say upon their Oath, *That the said W. R. did not undertake in Manner and Form as the aforesaid R. W. doth within declare against him. Therefore, &c.*

A Declaration on a Parol Promise to save one harmless upon an Obligation.

In B. R.
To save one
harmless upon
an Obligation.

E. B. complains of R. C. being in the Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid E. (such a Day and Year) at H. in the County aforesaid, at the special Instance and Request of the aforesaid R. by his Writing Obligatory, bearing Date the same Day and Year, was bound together with the aforesaid R. and for the sole Debt of the said R. unto one S. B. upon Condition there under-written, that if the aforesaid R. C. should pay unto the aforesaid S. B. at a certain Day in the same Condition contain'd, 18 l. of lawful, &c. that then that Writing should be void, and of none Effect,

or

or otherwise to remain in full Strength and Virtue ; the aforesaid R. afterwards, that is to say, on, &c. at, &c. undertook, and to the aforesaid E. B. then and there faithfully promised, that he the said R. at all Times then afterwards, should and would discharge and save harmless the aforesaid E. against the aforesaid S. of and from the aforesaid Writing Obligatory : Yet the aforesaid R. his Promise and Undertaking aforesaid not regarding, hath not hitherto discharged the aforesaid E. of or from the aforesaid Writing Obligatory, although he hath been often requested by him the said E. so to do : Whereupon the said E. saith, that he is injured, and hath Damage, &c.

A Declaration in Assumpsit for Taylor's Work, &c. with a Plea of Infra Ætat', Replication, Demurrer for Cause, &c.

Middlesex, to wit. **W** F. of London, Esq; In C. B. was attached to *For Taylors Work, &c. Mich. 4to Geo. 1.*
 answer to M. G. of a Plea of Trespas on the Case ; and whereupon the said M. by J. K. his Attorney complains, That whereas the aforesaid W. on the 20th Day of April in the third Year of the Reign of our Lord the now King, at Islington in the said County of M. was indebted to the aforesaid M. in 300 l. of lawful Money of Great Britain, as well for Taylors Work by him the said M. for the said W. and at his Request before that Time done and perform'd, as also for divers Sums of Money by him the said M. for the said W. and at his Request before that Time advanced,
For Work done and Money laid out.

Amplified.

Quantum
Meruit for
Garments
made, &c.

vanced, expended and laid out; And being so thereof indebted he the said *W.* in Consideration thereof, afterwards, to wit, on the Day and Year aforesaid, at *J.* aforesaid, undertook, and to the said *M.* then and there faithfully promised, That he the said *W.* would well and faithfully pay the said 300*l.* unto the said *M.* when he should be afterwards thereto required: And also whereas the aforesaid *W.* afterwards, to wit, on the same Day and Year aforesaid, at *J.* aforesaid, in Consideration that the aforesaid *M.* had at the like Request of him the said *W.* made up and fitted, and trimmed for the said *W.* divers Garments, and at the like Instance and Request of the said *W.* found and provided for the said *W.* divers Goods, Wares and Merchandizes in and about the making, fitting up, and trimming the said Garments, undertook, &c. that he the said *W.* would pay to the said *M.* so much Money as the said *M.* reasonably deserved to have for the making, fitting up and trimming the said Garments; as also all such Sums as the said *M.* had advanced and expended in and about the making, fitting up and trimming the said Garments: And the said *M.* in Fact says, That he reasonably deserved to have of the said *W.* for the said making, fitting up and trimming the said Garments 100*l.* of lawful Money of *Great Britain*; And also that he the said *M.* advanced and expended for the Goods, Wares and Merchandizes, used in and about the making, fitting up and trimming the said Garments, the Sum of 200*l.* of like lawful Money, to wit, at *J.* aforesaid, whereof the said *W.* then and there had No-

tice: And also whereas the aforesaid *W.* afterwards, to wit, on the same 20th Day of April in the Year aforesaid, at *J.* aforesaid, was indebted to the aforesaid *M.* in 200*l.* of like lawful Money, for so much Money by the same *M.* for the said *W.* and at his Request before that Time laid out and expended; and being so indebted he the said *W.* in Consideration thereof, afterwards, to wit, on the said 20th Day of April in the third Year aforesaid, at *J.* aforesaid, undertook, &c. as usual; And also whereas the aforesaid *W.* afterwards, to wit, on the same 20th Day of April, &c. (as before, on an Infimul Computaverunt of 200*l.*) for Taylors Work; *Mutatis mutandis, with the usual Conclusion.*

Implied.
Ind. Assump.
for 200*l.*

To which the Defendant pleads, That he was
Infra Ætatem, thus:

And the aforesaid *W.* by *R. A.* his Attorney comes and defends the Force and Injury, when, &c. and saith, That the aforesaid *M.* ought not to have his Action thereof against him, because he saith, That at the said several Times wherein the several Promises and Undertakings in the said Declaration above mentioned were made, he the said *W.* *F.* was within the Age of 21 Years: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *M.* ought to have his Action thereof against him.

Plea of Infra
Ætatem.

Richard Wynne.

And the aforesaid *M.* saith, That he, for any Thing by the said *W.* above in Pleading alledged,

Replication.

*Implied.**Protestando.*

alleged, ought not to be barred from having his said Action against him, because by protesting that the aforesaid *W.* at the several Times wherein the several Promises and Undertakings, mentioned in the above Declaration, were made, was not within the Age of 21 Years, as the aforesaid *W.* hath above in pleading alleged; For Plea he the said *M.* saith, That the Taylors Work, and the several Sums of Money in the Declaration above-mentioned, were done, performed, laid out and expended by the said *M.* for the said *W.* for the convenient and necessary Apparel and Cloathing of the said *W.* And this he is ready to verify: Whereof he prays Judgment, and his Damages by Occasion of the not performing of the several Promises and Undertakings aforesaid, to be adjudged to him.

*James Selby.**Demurrer.*

And the aforesaid *W.* saith, That the Plea of the said *M.* above by replying pleaded, and the Matter therein contained, are not sufficient in Law for the said *M.* to maintain his said Action against him the said *W.* and that he to that Plea in Manner and Form aforesaid pleaded has no Need, nor is he bound by the Law of the Land in any Manner to answer: And this he is ready to verify: Wherefore he prays Judgment if the aforesaid *M.* ought to have his Action thereof against him: And for Cause of Demurrer in Law upon that Plea, he the said *W.* according to the Form of the Statute in such Case lately made and provided, shews to the Court here these following Causes, to wit, for

On Parol Promises.

141

Implied.

for that he the said *M.* hath not distinguished how much Money was due to him for Taylors Work done, and how much was due to him for Money laid out and expended, as he ought to have alledged; and that the Replication aforesaid is uncertain, and only argumentative, not aptly pleaded, nor can any Issue be joined thereupon by the said *W.* for that the Matters in the same Plea contained are placed accumulatively in Issue, whereas in this Case they ought to have been placed distributively; and also for that the said Plea wants Form, &c.

Richard Wynne.

Whereupon Serjeant Selby joined in Demurrer, and the Cause being learnedly argued by the said Serjeant, on Tuesday, November the 19th 1717, Judgment was given for the Plaintiff.

A Declaration on an Infimul Computaverunt against Executors, with a Demurrer thereto, &c.

Southamp. to wit. **W**. C. late of the Parish of *Portsea* in the said County, Gentleman, and *D. Wall* late of the Parish of *Hayling* in the same County, Clerk, and *J. Smith* late of *Newport* in the *Isle of Wight* in the same County, Chirurgeon, Executors of the Testament of *W. S.* late of the Parish of *P.* aforesaid, in the said County, Gentleman, deceased, were attached to answer to *J. Mellish* of a Plea of Trespass on the Case; and whereupon the said *J.* by *C. B.* his Attorney, complains,

In C. B.
Infimul com-
putav. A-
gainst Execu-
tors, Pas. 3
Geo. 1.

Declarations, &c.

Expressed. plains, That whereas the aforesaid *W. S.* in his Life-time, and at the Time of his Death, was indebted to the said *J. M.* in divers Sums of Money, to wit, at *P.* in the County aforesaid, they the said *W. Cooper, S.* and *J.* after the Death of the said *W. S.* to wit, on the first Day of *April* in the Year of our Lord 1714, at *P.* aforesaid, and he the said *J. M.* at the special Instance and Request of the said *W. C. B.* and *J.* to the said *J. M.* then and there made, did account together between themselves of the aforesaid divers Sums so due and payable to the said *J. M.* by the said *W. S.* and upon that Account he the said *W. S.* was found to have been in Arrearage at the Time of his Death, unto the same *J.* in 609 *l.* 8 *s.* 11 *d.* $\frac{1}{2}$ of lawful Money of *Great Britain*: And he the said *W. S.* being so found in Arrearage at the Time of his Death, they the said *W. C.* and *J.* in Consideration of the Premisses, then and there undertook, and unto the said *John* then and there faithfully promised to pay unto him the said *J.* the same Sum of Money at or before the 25th Day of *December* then next following: Yet they the aforesaid *W. C. D.* and *J. S.* not regarding their Promise and Undertaking made in the Form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *J. M.* in this Particular, have not yet paid to the said *J. M.* the said Sum of Money, nor any Penny thereof, nor in any Manner satisfied him for the same, although to do this they were afterwards requested by the said *J. M.* to wit, on the first Day of *April* in the second Year of the Reign of our Lord the now King, and

and often afterwards at P. aforesaid; but they and each of them have hitherto refused, and still do refuse, in any Manner to pay or satisfy him for the same, to the Damage of him *7. M.* 300*l.* And thereupon he brings this Suit, &c.

Expressed.

And the aforesaid *W. C. D. W.* and *7. S.* *Demurrer.*
by *E. H.* their Attorney, come and defend

the Force and Injury, when, &c. and pray Judgment of the Declaration aforesaid, because they say that the Declaration aforesaid, and the Matter therein contained, are not sufficient in Law for him the said *7.* to have and maintain his said Action against them the said *W. C. D. W.* and *7. S.* to which said Declaration they the said *W. D.* and *7.* have no Need, nor are they bound by the Law of the Land, in any Manner to answer: And this they are ready to verify: Wherefore for Default of a sufficient Declaration in this Particular, they the said *W. D.* and *7.* pray Judgment of the Declaration aforesaid; and that the said *7. M.* may be barred from having his Action against them: And for Causes of demurring in Law, they shew these following, to wit, That it does not appear by the said Declaration, when the aforesaid *W. S.* died, nor for what Consideration they the said *W. C. D. W.* and *7. S.* were indebted (assumed;) And also for that by the said Declaration they the said *W. C. D. W.* and *7. S.* are charged in their own proper Rights, (they being only Executors) and because it is uncertain, double, and wants Form. *Causes of the Demurrer.*

Note; On the Plaintiff's joining in this Demurrer the same was argued on Wednesday the 22d of May 1717, and Judgment was thereupon given for the Plaintiff. *Judgment for the Plaintiff.*

Trinity

Implied.

Trinity Term in the Eleventh and Twelfth
Years of the Reign of King George the
Second.

In B. C.
Declaration on
a Bill filed
against a
Member of
Parliament.

Ind. Assump.
for Goods sold
and delivered.

Quantum
Val. thereon.

BE it remember'd, That on *Friday* the se-
cond Day of *June* in this same Term,
cometh here into Court P. C. by J. C. his
Attorney, and exhibited to the Justices of
the Lord the King here a certain Bill against
the Hon. C. C. Esq; (having Privilege of
Parliament) of a Plea of Trespas on the
Case, &c. the Tenor of which said Bill fol-
loweth in these Words, To the Justices of his
Majesty's Court of Common Bench, *Middle-*
sex, P. C. by J. C. his Attorney complains of
the Hon. C. C. Esq; (having Privilege of Par-
liament) of a Plea of Trespas on the Case,
for that whereas the said C. on the first Day
of *May*, which was in the Year of our Lord
1738, at *Westminster* in the said County of
Middlesex, was indebted unto the said P. in
300*l.* of lawful Money of *Great Britain*, for
divers Goods, Wares, and Merchandizes by
the said P. unto the said C. and at his speci-
al Instance and Request before that Time
sold and delivered; And being so indebted
he the said C. afterwards, to wit, the same
Day and Year above-mentioned at *Westmin-*
ster aforesaid, undertook, and then and there
faithfully promised the said P. to pay the said
300*l.* unto him the said P. when he the said
C. should be thereunto afterwards requested:
And whereas afterwards, the same Day
and Year above-mentioned, at *Westminster*
aforesaid, in Consideration that the said P.
had

On Parol Promises.

145

Implied.

had before that Time sold and delivered unto the said C. divers other Goods, Wares, and Merchandizes, he the said C. took upon himself, and to the said P. then and there faithfully promised, That he the said C. would well and truly pay unto the said P. so much Money, as the Goods, Wares, and Merchandizes last mentioned at the Time of the Sale and Delivery thereof were reasonably worth, whenever after he the said C. should be thereunto requested: And the said P. avers, that the Goods, Wares and Merchandizes last mentioned, at the Time of the Sale and Delivery thereof to the said C. were reasonably worth other 300 l. of like lawful Money, to wit, at *Westminster* aforesaid in the County aforesaid, of which the said C. from the said P. had then and there Notice:

And whereas the said C. afterwards, that is to say, the said first Day of *May* at *Westminster* aforesaid, was indebted unto the said P. in other 300 l. of like lawful Money as well for Work by the said P. for the said C. and at his like Instance before that Time done and performed, as for divers Materials and Things necessary in and about the said Work used by the said P. at the like special Instance and Request of the said C. before that Time found and provided; and being so indebted the said C. in Consideration thereof, afterwards, that is to say, the same Day and Year last aforesaid, at *Westminster* aforesaid, took upon himself, and then and there faithfully promised to pay to the said P. the said Sum of Money last mentioned, when he should be afterwards thereto requested: And whereas the said C. afterwards, that is to say, the

Ind. Assump.
for Work and
Materials.

Quant. Me-
rit thereon.

L

Day

Implied.

Day and Year aforesaid, at *Westminster* aforesaid, in Consideration that the said P. at the like Instance of the said C. before that Time had done, and performed other Work for the said C. and had found, provided and used divers other Materials and Things, necessary in and about the Work last mentioned, took upon himself, and then and there faithfully promised the said P. that he the said C. would pay to the said P. so much Money as he therefore reasonably deserved to have; and the said P. doth aver that he therefore reasonably deserved to have of the said C. other 300 l. that is to say, at *Westminster* aforesaid, of which the said C. from the said

Ind. Assump.
for Money laid
out.

P. had then and there Notice: And whereas the said C. afterwards, that is to say, at *Westminster* aforesaid, was indebted unto the said P. in other 300 l. for so much Money by the said P. for the said C. and at his like special Instance and Request, before that Time laid out, expended and paid; and being so indebted he the said C. in Consideration thereof, afterwards, that is to say, the same Day and Year last aforesaid, at *Westminster* aforesaid, took upon himself, and then and there faithfully promised the said P. to pay him the said Sum of Money last mentioned, when he should be afterwards thereto requested: Nevertheless the said C. not regarding his aforesaid several Promises and Undertakings, but craftily and subtilly contriving and intending to deceive and defraud the said P. in this Particular, hath not paid the said several Sums of Money or any Part thereof to the said P. (although often requested, &c.) but the said C. hitherto hath refused, and still

Breach.

doth

Implied. lawful Business done and performed, as for depasturing, feeding, and grazing certain Cattle of the said S. while she was Sole, at her like Request depastured, fed and grazed by the said W. T. which said several Sums of 50, 50, 50, and 50 l. amount in the whole to the Sum of 200 l. and are still due and unpaid to the said W. T. and the said W. T. further saith, That he has been and still is ready, and doth now offer (according to the Form of the Statute in this Behalf made and provided) to set off against the Money, which in and by this Suit shall appear to be due to the said J. and S. so much of the said 200 l. so as aforesaid due to him the said W. T. as shall satisfy such Money as appears to be due to the said J. and S. as aforesaid: And this he is ready to verify: Wherefore he prays Judgment if the said J. and S. ought to have their said Action against him.

W. Hawkins.

Vandernune, at the Suit of Jackson.

Seacc. Non Assumpsit.

AND the said H. by R. M. his Attorney comes and defends the Force and Injury, when, &c. and saith, That he did not take upon himself in Manner and Form as the said R. hath above declared against him: And of this he puts himself on the Country; and the said R. doth the same.

Notice to set off a Debt.

Take Notice that the Defendant intends at the Trial of this Cause to set off a Debt of 126 l. due from the Plaintiff to the said Defendant, for Work and Labour done, and for

On Parol Promises.

149

Implied.

for Goods sold and delivered, and for Money laid out; and the said Sum, or so much thereof, as may be sufficient to answer the Plaintiff's Demands in this Cause, may be set off against the Plaintiff's said Demands, pursuant to the Act of Parliament in that Case made and provided.

To Mr. W. Lloyd,
Clerk in Court for
Plaintiff.

Edward Saunderson, Cl. in Court
for Def. Dated
10 May 1734

And the said D. by E. F. his Attorney comes and defends the Force and Injury, when, &c. and says, that the said P. ought not to have or maintain his said Action thereof against him, because he says, That the said P. heretofore, that is to say, in *Easter* Term in the eighth Year of the Reign of his present Majesty impleaded the said D. in his said Majesty's Court, before Sir R. E. Knt. and his Companions, then his said Majesty's Justices of the Bench at *Westminster*, in a certain Plea of Trespass on the Case upon Promise, to the Damage of the said P. of 15 l. of and for the not performing the very same Identical Promises and Undertakings, mentioned in the said Declaration; and such were the Proceedings thereupon in the said Court of the Bench, that the said P. afterwards, to wit, in that same *Easter* Term in the Eighth Year aforesaid, by the Consideration and Judgment of that Court, recovered against the said D. 13 l. 10 s. which in the said Court of the Bench in that

B. R.
Plea, that
Plaintiff re-
covered a Judg-
ment for that
same Matter
in C. B.
Skin. 220.

L 3

Plea

Amplified.

Plea were adjudged to him for his Damages which he had sustained, as well on Occasion of the not performing those very same Identical Promises and Undertakings mentioned in the said Declaration, as for his Costs and Charges by him about his Suit in that Behalf expended; whereof the said D. is convicted, as by the Record and Proceedings thereof, still remaining in the said Court of the Bench aforesaid at *Westminster* aforesaid, may more fully and at large appear; which said Judgment still remains in full Force, Strength and Effect, not in the least reversed, annulled, or made void: And this he is ready to verify by the said Record: Wherefore he prays Judgment whether the said P. ought to have or maintain his said Action thereof against him, &c.

Plea, that Defendant paid the Money according to his Promise;

And the said D. by *B. F.* his Attorney comes and defends the Force and Injury, when, &c. and says, That the said P. ought not to have his said Action against him, because he says, That after the Promise and Undertaking aforesaid, by him the said D. in Form aforesaid made, and before the Day of obtaining the Original Writ of the said P. to wit, on the said — Day, &c. he the said D. at —, &c. did well and truly pay unto the said P. the said Sum of 50*l.* according to his Promise and Undertaking aforesaid: Wherefore he prays Judgment if the said P. ought to have his said Action against him, &c.

Replication.

And the said P. says, That he, by any thing by the said D. above in Pleading alleged, ought not to be precluded from having his said Action against him, because he says,

says, That the said D. did not pay to the said P. the aforesaid Sum of 50*l*. in Manner and Form as the said D. hath above in pleading alledged: And this he prays may be inquired of by the Country.

Implied.

And the said D. by E. E. his Attorney comes and defends the Force and Injury, when, &c. and says, That the said P. ought not to have or maintain his said Action against him, because he says, that the said P. at the Time of obtaining the said Original Writ against him the said D. was, and still is indebted to the said D. in the Sum of 100*l*. of lawful Money of Great Britain, for divers Goods, Wares and Merchandizes, sold and delivered by the said D. to the said P. at the special Instance and Request of the said P. which Sum exceeds the Damages sustained by the said P. by Reason of the not performing the said several Promises and Undertakings; and out of which said Sum he is willing to set off and allow to the said P. so much Money, as the Damages sustained by the said P. by Reason of the not performing the said several Premises and Undertakings mentioned in his Declaration amount unto: And this he is ready to verify: Wherefore he prays Judgment if the said P. ought to have or maintain his said Action against him the said D.

Plea, that the Plaintiff is indebted to Defendant in a greater Sum for Goods, &c. and Offer to set off.

Vide antea fol. 147, 148.

W. Hawkins,

And the said P. says, That he by any Thing before alledged ought not to be barred from having his said Action therefore against the said D. because he says, That he the said P. at the Time of obtaining the said

Replication.

Implied. Original Writ, was not nor is indebted unto the said *D.* in Manner and Form as the said *D.* hath above in pleading alledged: And this he prays may be inquired of by the Country, &c.

B. R.
Plea, that
Plaintiff is out-
lawed in C. B.

And the said *D.* by *E. F.* his Attorney comes and defends the Force and Injury, when, &c. and says, That the said *P.* ought not to have or maintain his said Action against him, because he says, that one *G. H.* heretofore, that is to say, in *Easter* Term in the fifth Year of the Reign of his present Majesty, impleaded the said *P.* by the Name of *P. J.* late of, &c. in his present Majesty's Court before Sir *R. E.* Knt. and his Companions, then his said Majesty's Justices of the Bench at *Westminster* in the County of *Middlesex*, in a Plea of Trespass; and the said *P.* because he did not appear in his said Majesty's Court of the Bench to answer unto the said *G. H.* in the aforesaid Plea, according to the Law and Custom of this Realm, was put in Exigent to be outlawed in *London*; and for that Reason, afterwards, that is to say, on, &c. in the ——— Year, &c. in the said Court of the Bench, was outlawed in due Form of Law at the Suit of the said *G.* in the aforesaid Plea, and still remains outlawed, as by the Record and Proceedings thereof, in his Majesty's said Court of the Bench at *Westminster* aforesaid returned, and now there remaining, may more fully appear: And this he is ready to verify by the said Record: Wherefore he prays Judgment whether the said *P.* ought to have or maintain his aforesaid Action thereupon against him, &c.

And

And the said *D.* by *E. F.* his Attorney, comes and defends the Force and Injury, when, &c. And as to all the Promises and Undertakings in the Declaration above specified, except the second Promise and Undertaking above supposed to be made, the said *D.* saith, That he did not undertake in Manner and Form, as the said *D.* above complains against him; And of this he puts himself upon the Country; and the said *P.* doth likewise the same, &c. And as to the second Promise and Undertaking, he the said *D.* saith, That the said *P.* ought not to have or recover any greater or further Damages against him the said *D.* than 84*s.* because he says, That well and true it is, that he the said *D.* did undertake in Manner and Form as the said *P.* hath above declared against him, as to the said second Promise and Undertaking, but for Plea the said *D.* saith, That the aforesaid Horse, in the said second Promise and Undertaking in the above Declaration mentioned, at the aforesaid Time of the Sale and Delivery thereof was worth 84*s.* only and no more, to wit, at *W.* aforesaid, and the said *D.* further says, That always after the making the said second Promise and Undertaking he was ready, and before the obtaining the Original Writ of the said *P.* against the said *D.* to wit, on the — Day of —, &c. at *W.* aforesaid, tendered to pay unto the said *P.* the said 84*s.* for the aforesaid Horse in the said second Promise and Undertaking in the Declaration above-mentioned, and that the said *P.* did then and there wholly refuse to receive of the said *D.* the same 84*s.* and that the said *D.* hath always

English.

ways from thence hitherto been ready, and now is ready to pay to the said P. the afore-said 84 s. for the said Horse, in the said second Promise and Undertaking in the Declaration above-mentioned, and doth now bring the same into Court to be paid to the said P. And this he is ready to verify: Wherefore he prays Judgment if the said P. ought to have or recover against him any greater or further Damages than the said 84 s. &c.

Case Sur Assumpsit.

- 1 Count Indeb. Assump. 30 l. for Goods sold.
- 2 — Quant. Valeb. thereon.
- 3 — Ind. Assump. 100 s. for depasturing.
- 4 — Quant. Valeb. thereon.
- 5 — Infimul Comp. 30 l.

Plas, Tendar. **A**ND the said D. by E. F. his Attorney comes and defends the Force and Injury, when, &c. and says, That as to 29 l. 4 s. Parcel of the Sum of 30 l. in the first Count in the said Declaration mentioned, and as to the Sum of 30 l. in the second Count in the said Declaration mentioned, and as to 69 s. 2 d. Parcel of the Sum of 100 s. in the third Count in the said Declaration mentioned, and as to the Sum of 100 s. in the fourth Count in the said Declaration mentioned, and as to the Sum of 30 l. in the fifth Count in the said Declaration mentioned, he did not assume upon himself in Manner and Form as the said P. above in and by his said Declaration hath alledged: And

of

On Parol Promises.

155

Implied.

of this he puts himself upon the Country; and the P. likewise, &c. And as to 16s. Residue of the said 30l. in the said first Count mentioned, and as to 30s. 10d. Residue of the said 100s. in the said third Count mentioned, the said D. saith, That the said P. ought not to recover any further Damages against him than the said 16s. and 30s. 10d. because he says, That as to the said 16s. he the said D. from the Time of making his Promise and Assumption for Payment of the said 16s. (which Promise he made for the Price of half a Chaldron of Coals, sold and deliver'd by the said P. unto him the said D.) was always ready, and now is ready to pay the said 16s. unto the said P. and he the said D. before the Day of suing forth the said Original Writ of the said P. to wit, on the — Day, &c. at W. aforesaid, offered to pay, and tendered the said 16s. unto the said P. but the said P. then and there refused to accept the same of him the said D. And as to the said 30s. 10d. he the said D. says, That from the Time of making his said Promise and Assumption for Payment of the said 30s. 10d. he was always ready, and now is ready to pay the said 30s. 10s. unto the said P. and he the said D. before the Day of suing forth the said Original Writ of the said P. to wit, on the said — Day, &c. at W. aforesaid, in the County aforesaid, offered to pay and tendered the said 30s. 10d. unto the said P. but the said P. then and there refused to accept the same of the said D. And the said D. bringeth here into Court the said 16s. and the said 30s. 10d. ready to be paid to the said P. if he will receive the same: And this he

Implied. he is ready to verify: Wherefore he prays Judgment if the said *P.* ought to have and recover any more Damages against him than the said 16 s. and 30 s. 10 d. &c.

J. Belfield.

Demurrer.

And the said *P.* as to the said Plea of the said *D.* as to the said 16 s. Residue of the said 30 l. in the said first Count mentioned above pleaded, says, That the same Plea in Manner and Form aforesaid above pleaded, and the Manner therein contained, are insufficient in Law for the said *D.* to bar the said *P.* from recovering any further Damages than the said 16 s. on Occasion of the Non-Payment of the said 16 s. and that he the said *P.* is under no Necessity, nor is bound by the Law of the Land to make any Answer to that Plea above pleaded in Manner and Form aforesaid: And this he is ready to verify: Wherefore for want of a sufficient Plea in this Behalf the said *P.* prays Judgment, and his Damages by Reason of the not performing the said Promise and Assumption in the said Declaration first above mentioned, as to the said 16 s. to be adjudged to him, &c. And as to the said Plea of the said *D.* as to the said 30 s. 10 d. Residue of the said 100 s. in the said third Count of the said Declaration mentioned above pleaded, the said *P.* says, That the same Plea in Manner and Form aforesaid above pleaded, and the Matter therein contained, are insufficient in Law for the said *D.* to bar the said *P.* from recovering any further Damages than the said 30 s. 10 d. on Occasion of the Non-Payment of the said 30 s. 10 d. and that he the said *P.* is under

der no Necessity nor is bound by the Law of the Land to make any Answer to that Plea above pleaded in Manner and Form aforesaid: And this he is ready to verify: Wherefore for Want of a sufficient Plea in this Behalf the said *P.* prays Judgment, and his Damages by Reason of not performing his said Promise and Assumption in the said Declaration thirdly above mentioned, as to the said 30 s. 10 d. to be adjudged to him, &c.

Implied.

G. Eyre.

And the said *D.* says, That the said Plea of the said *D.* as to the said 16 s. Residue of the said 30 l. in the said first Count mentioned in Manner and Form as the same is above pleaded by the said *D.* and the Matter therein contained, are good and sufficient in Law to bar the said *P.* from recovering any further Damages than the said 16 s. on Occasion of the Non-Payment of the said 16 s. against the said *D.* which said Plea and the Matter therein contained the said *D.* is ready to verify and prove in such Manner as the Court here shall direct: And because the said *P.* hath not answered the said Plea, or in any Manner denied the same, the said *D.* as before prays Judgment, and that the said *P.* may be barred from recovering any further than the said 16 s. on Occasion of the Non-Payment of the said 16 s. against the said *D.* thereon, &c. And the said *D.* says, That the said Plea of the said *D.* as to the said 30 s. 10 d. Residue of the said 100 s. in the said third Count mentioned in Manner and Form as the same is above pleaded by the said

Joinder.

Impleaded. said D. and the Matter contained therein, are good and sufficient in Law to bar the said P. from recovering any further Damages than the said 30 s. 10 d. against the said D. which said Plea and the Matter therein contained the said D. is ready to verify and prove in such Manner as the Court here shall direct: And because the said P. hath not answered the said Plea, or in any Manner denied the same, the said D. as before prays Judgment, and that the said P. may be barred from recovering any further Damages than the said 30 s. 10 d. on Occasion of the Non-Payment of the said 30 s. 10 d. against the said D. thereon, &c.

Judgment for the Plaintiff, because the Plea was delivered after a general Imparlance.

Declaration, 1 Count, Indeb. Assumpsit for Money had and received, 2 — Indeb. Assumpsit for Money laid out.

Plea, Tender.

AND the said D. by E. F. his Attorney comes and defends the Force and Injury, when, &c. And as to the first Promise and Undertaking in the said Declaration first above mentioned, and as to 3 l. 18 s. 11 d. $\frac{1}{2}$ Parcel of the said 5 l. in the said Declaration lastly above-mentioned, says, That he did not undertake and promise in Manner and Form as the said P. hath above complained against him: And hereupon he puts himself on the Country; and the said P. does so likewise: And as to 21 s. $\frac{1}{2}$ Residue of the said 5 l. in the said

Amplified.

said Declaration lastly above-mentioned, the said D. says, That the said P. ought not to recover any Damages against him, by Reason of the Non-Payment thereof, because he says, That he the said D. after the making the said Promise and Undertaking as to the said 21 s. $\frac{1}{4}$, and before the Day of obtaining the Original Writ of the said P. against him, to wit, on the — Day, &c. at W. afore-said, was ready, and offered to pay to the said P. the said 21 s. $\frac{1}{4}$, which Sum of Money he the said P. then and there refused to accept of the said D. And the said D. further says, That he the said D. from the Time of making the said Promise and Undertaking as to the said 21 s. $\frac{1}{4}$, hitherto has been and still is ready and willing to pay to the said P. that Sum of Money, and brings the same here into Court ready to be paid to the said P. if he will accept the same of the said D. And this he is ready to verify: Wherefore he prays Judgment if the said P. ought to recover any Damages against him by Reason of the Non-Payment of the said 21 s. $\frac{1}{4}$, &c.

And the said P. says, That by Reason of any thing above pleaded by the said D. he ought not to be barred from recovering his Damages against him, by Reason of the Non-Payment of the said 21 s. $\frac{1}{4}$, because he says, That the said D. did not offer to pay to the said P. the said Sum of 21 s. $\frac{1}{4}$, in Manner and Form as the said D. hath by his said Plea in that Respect above alledged: And this he prays may be inquired of by the Country.

And the said D. by E. F. his Attorney comes and defends the Force and Injury, when, &c. and says, That the said P. ought not

Non Assump.
infra Sex
Annos, at
the Suit of an
Attorney.

Implied. not to have his aforesaid Action therefore against him, because he says, That he did not assume upon himself at any Time within Six Years next before the Day of suing forth the said Writ of Privilege of the said P. in Manner and Form as the said P. above complains against him: And this he is ready to verify: Wherefore he prays Judgment, whether the said P. ought to have his Action therefore against him, &c.

J. Belsfield.

Plea, by Baron and Feme Administratrix.

A Judgment in B. R. against Intestate on Bond, by Cognovit Actionem.

And the said D. and E. his Wife, by F. G. their Attorney, come and defend the Force and Injury, when, &c. and say, That the said P. ought not to have his said Action against them, because they say, that *John Doe*, in the Life-time of the said *Richard Roe*, to wit, on *Friday* next after the Morrow of the Holy Trinity in the Term of the Holy Trinity in the Tenth Year of the Reign of the said Lord the King that now is, in the Court of the said Lord the King before the King himself, (the said Court being then at *Westminster* in the County of *Middlesex*,) came and brought his certain Bill in the same Court against the said *Richard Roe*, by the Name of *Richard Roe*, of, &c. Gentleman, the said *Richard Roe* then being in the Custody of the Marshal of the *Marshalsea* of the said Lord the King before the King himself, in a Plea of Debt, by which said Bill the said *John Doe* then and there complained of the said *Richard Roe*, of a Plea, that he should render to him 500*l.* of lawful Money of *Great Britain* which he owed him, and unjustly detained, for that the said

Implied.

said *Richard Roe* in his Life-time, to wit, on the — Day of —, &c. by his certain Writing Obligatory, sealed with the Seal of of the said *Richard Roe*, there shewn to the Court of the said Lord the King, the Date whereof was the same Day and Year last above-mentioned, acknowledged himself to be held and firmly bound to the said *John Doe*, in the said Sum of 500*l.* to be paid to the said *John Doe*, when he should be afterwards thereto required; Nevertheless the said *Richard Roe*, although often required, had not paid the said 500*l.* to the said *John Doe*, but had altogether refused, and to that Time did refuse to pay the same to him, to the Damage of the said *John Doe* of 20*l.* And therefore he brought this Suit, &c. And the said *Richard Roe*, by — his Attorney, came and defended the Force and Injury, when, &c. and said, That he could not deny the said Action of the said *John Doe*, nor but that he owed the said *John Doe* the said 500*l.* in Manner and Form as the said *John Doe* above complain'd against him: Therefore in the same Term of the Holy Trinity it was considered by the same Court, That the said *John Doe* should recover his said Debt against the said *Richard Roe*, and also 63*s.* for his Damages which he had sustained; as well by Reason of the detaining that Debt as for his Costs and Expences laid out by him about his Suit in that Behalf, then there adjudged by the Court of the said Lord the King to the said *John Doe*, with his Consent: And the said *Richard Roe* was in Mercy, &c. as by the Record of the said Proceedings, remaining in the said Court of the

Implied. said Lord the King, before the King himself at *Westminster*, fully and plainly appears; and which said Judgment so obtained as aforesaid, was obtained for a true and just Debt, and still remains in full Force and Virtue, and not in the least reversed, or annulled; and the Debt and Damages aforesaid are in no wise satisfied: And the said *D. and E.* his Wife further say, That the said *Richard Roe* in his Life-time, to wit, on the ——— Day of, *Esc.* was indebted to one *John Den* in the Sum of 20*l.* for divers Goods, Wares and Merchandizes, by the said *John Den* before that Time sold and delivered to the said *Richard Roe*, and at his special Instance and Request; and being so indebted he the said *Richard Roe* in his Life-time, in Consideration thereof, afterwards, to wit, the same Day and Year aforesaid, at *W.* aforesaid, undertook, and then and there faithfully promised the said *John Den* to pay him the said 20*l.* when he should be thereto afterwards required; and that in this present Term of *St. Hilary* he the said *John Den*, in the said Court of the said Lord the King before the King himself, to wit, at *Westminster* aforesaid, by the Consent of the same Court, recovered against the said *D. and E.* his Wife his Damages, which he had sustained by Occasion of the not performing the Promise and Assumption aforesaid, beyond his Costs and Charges by him in and about his Suit in that Behalf laid out, to 20*l.* and for the said Costs and Charges to 4*l.* 10*s.* adjudged to the said *John Den*, by his Assent, by the same Court; which said Damages amount in the whole to 24*l.* 10*s.* to be levied of the Goods and Chattrels

*A Judgment
against the
Defendant as
Administra-
trix, for Goods
sold to the In-
estate.*

On Parol Promises.

163

Implied.

Chattels of the said *Richard Roe* at the Time of his Death, in the Hands of the said *D.* and *E.* his Wife, to be administred, if they should have sufficient thereof for the same in their Hands; and if they should not have sufficient, then the said 4*l.* 10*s.* for the Costs and Charges aforesaid to be levied of the proper Goods and Chattels of the said *D.* and *E.* his Wife; whereof the said *D.* and *E.* his Wife are convicted, as by the Record of the said Proceedings, remaining in the said Court of the said Lord the King before the King himself at *Westminster*, manifestly appears; which said Judgment in Form aforesaid had and obtained was for the just Damages truly and really sustained by the said *John Den*, as well by Occasion of the not performing the said Promise and Assumption, as for his Costs and Charges by him about his Suit in that Behalf laid out: And the said *D.* and *E.* his Wife in Fact further say, That the same Damages hitherto are truly and justly due and not paid or satisfied, and that the said Judgment still remains in full Force and Virtue, not reversed, annulled, or in any wise satisfied: And the said *D.* and *E.* his Wife further say, That the said *Richard Roe* in his Life-time, to wit, upon the — Day of, &c. made and signed a certain Note in Writing, called a Promissory Note, with his proper Hand subscribed thereto, by which said Note he the said *Richard Roe* promised to pay to one *Richard Fen*, or Order, 30*l.* on Demand, for Value received, and the same Note to the said *Richard Fen* did deliver; by Virtue of which said Note, and by Force of the Statute in such Case made and provided, the

*Th^o like on a
Promissory
Note of Intes-
tate's.*

Implied.

said *Richard Roe* in his Life-time became liable to pay to the said *Richard Fen* the Sum of Money contained in the said Note, according to the Tenor and Effect of the said Note; and being so liable he the said *Richard Roe*, afterwards, to wit, on the same Day and Year aforesaid, undertook, and then and there faithfully promised the said *Richard Fen* to pay him the said Sum of Money contained in the said Note, according to the Tenor and Effect of the said Note; and that in this present Term of St. *Hilary* he the said *Richard Fen*, in the said Court of the said Lord the King before the King himself, to wit, at *Westminster* aforesaid, by the Consideration of the same Court, recovered against the said *D. and E.* his Wife, his Damages which he had sustained by Occasion of the not performing the Promise and Undertaking last mentioned, beyond his Costs and Charges by him in and about his Suit in that Behalf laid out, to 30 *l.* and for the said Costs and Charges to 5 *l.* adjudged to the said *Richard Fen*, by his Assent, by the same Court; which said Damages amount in the whole to 35 *l.* to be levied of the Goods and Chattels of the said *Richard Roe*, at the Time of his Death in the Hands of the said *D. and E.* his Wife to be administered, if they should have sufficient thereof for the same in their Hands; and if they should not have sufficient, then the said 5 *l.* for the Costs and Charges aforesaid to be levied of the proper Goods and Chattels of the said *D. and E.* his Wife, whereof the said *D. and E.* his Wife are convicted, as by the Record of the said Proceedings, remaining in the said Court of

Implied.

of the said Lord the King before the King himself at *Westminster* aforesaid, manifestly appears; which said Judgment in Form aforesaid had and obtained, was for the just Damages truly and really sustained by the said *Richard Fen*, as well by Occasion of the not performing the said Promise and Assumption, as for his Costs and Charges by him about his Suit in that Behalf laid out: And the said *D. and E.* his Wife further say, That the same Damages hitherto are truly and justly due, and not paid or satisfied, and that the same Judgment still remains in full Force and Virtue, not reversed, annulled, or in any wise satisfied: And the said *D. and E.* his Wife, further say, That the said *Richard Roe* in his Life-time, to wit, on the — Day of, &c. by one other Writing Obligatory, sealed with the Seal of the said *Richard Roe*, acknowledged himself to be held and firmly bound to *John Nokes* of, &c. in 100*l.* of good and lawful Money of *Great Britain*, to be paid to the said *John Nokes*, when he should be thereto required, which said Writing Obligatory was entered into by the said *Richard Roe*, for a true and just Debt, truly and justly due to the said *John Nokes*; and that the said Debt so due as aforesaid by the same Writing Obligatory, or any Part thereof, hitherto is not paid, discharged, or satisfied: And the said *D. and E.* his Wife further say, That they have fully administred all the Goods and Chattels which were the said *Richard Roe*'s at the Time of his Death in their Hands to be administred, except Goods and Chattels to the Value of 5*l.* And that they the said *D. and E.* his Wife have

A Bond entered into by Intestate.

Plene administraitur.

Vaugh. 104.

Implied.

not, nor hath either of them, nor at the Time of issuing the Original Writ of the said P. or at any Time afterwards, had any Goods or Chattels which were the said *Richard Roe's* at the Time of his Death, in their Hands to be administred, except the Goods and Chattels aforesaid, to the Value of *5l.* aforesaid, and which remain charged with the Payment and Satisfaction of the said several Sums of Money due and owing on the aforesaid several Bonds and Judgments: And this they are ready to verify: And therefore they pray Judgment if the said P. ought to have his said Action against them.

W. Chapple.

*B. R.
Plea, by an
Aministrator.*

*A Judgment
obtained a-
gainst Defen-
dant, on a
Bond entered
into by the In-
testate.*

And the said *D. E.* the now Defendant, by — his Attorney, comes and defends the Wrong and Injury, when, &c. and says, That the said P. ought not to have or maintain his said Action against him, because he says, that the said *D. E.* the Intestate in his Life-time, to wit, upon the — Day of, &c. at *W.* aforesaid in the County aforesaid, by his Writing Obligatory, sealed with the Seal of the said *D. E.* the Intestate acknowledged himself to be held and firmly bound unto *John Doe* of, &c. in *500l.* of good and lawful Money of Great Britain, to be paid to the said *John Doe*, when he should be thereunto required, which said *500l.* was a just and true Debt, due and owing by the said *D. E.* the Intestate in his Life-time, to the said *John Doe*, and were due, unpaid and unsatisfied, to the said *John Doe*, at the Time of the Death of the said *D. E.* the Intestate; and the same not being paid, and the said Writing

ting Obligatory remaining in its full Force and Virtue, no wise discharged, cancelled, or satisfied, the said *John Doe*, after the Death of the said *D. E.* the Intestate, to wit, in this same Term of *St. Hilary* in the — Year of the Reign of his present Majesty, in the Court of his present Majesty of the Bench at *Westminster* in the County of *Middlesex*, impleaded the said *D. E.* now Defendant, as Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the said *D. E.* deceased, who died Intestate, for the said 500*l.* in a Plea of Debt for the same, and it was thereupon so far proceeded in the said Court of his present Majesty of the Bench, that the said *John Doe*, afterwards, to wit, in the same Term of *St. Hilary* in the same — Year of his present Majesty's Reign in the said Court, before Sir *T. R.* Knt. and his Companions, then Justices of his said present Majesty of the Bench at *Westminster* aforesaid, by the Judgment of the same Court recovered against the said *D. E.* now Defendant, as Administrator as aforesaid, as well the said Debt of 500*l.* as 50*s.* which were adjudged to the said *John Doe* by the said Court, for his Damages which he had sustained by Reason of detaining his said Debt, to be levied of the Goods and Chattels which were the said *D. E.*'s the Intestate, at the Time of his Death, in the Hands of the said *D. E.* now Defendant to be administered, if the said *D. E.* now Defendant, had so much Goods and Chattels, which were the said *D. E.*'s the Intestate, at the Time of his Death in his Hands to be administered; and if he had

Implied. not, then the said Damages to be levied of the proper Goods and Chattels of the said *D. E.* the now Defendant; whereof he is convicted as by the Record and Proceedings thereof, now remaining in the said Court of his said present Majesty of the Bench at *Westminster*, more fully appears; which said Judgment still remains in its full Force, Strength and Virtue, not reversed nor vacated, nor any ways satisfied: And the said *D. E.* the now Defendant, further says, That in the Term of *St. Hilary* in the — Year of the Reign of his said present Majesty, in the said Court of his present Majesty of the Bench, before *Sir R. E. Knt.* and his Companions, then Justices of his said present Majesty of his Bench at *Westminster* aforesaid, one *Richard Roe*, by Judgment of the same Court, recovered against the said *D. E.* the Intestate, by the Name of *D. E.* late of, &c. as well a certain Debt of 200 *l.* as 50 *s.* which were adjudged to the said *Richard Roe* by the said Court for his Damages which he had sustained by Reason of detaining the said Debt, whereof he is convicted, as by the Record and Proceedings thereof, now remaining in the said Court of his said present Majesty of the Bench at *Westminster* aforesaid, more fully appears, which said Judgment still remains in its full Force, Strength and Virtue, not reversed, nor vacated, nor any ways satisfied: And the said *D. E.* the now Defendant says, That he hath fully administred all and singular the Goods and Chattels which were the said *D. E.*'s the Intestate at the Time of his Death, in his Hands to be administered, except Goods and

A Judgment obtained against the Intestate.

Plene administravit præter.

Chattels

On Parol Promises.

169

Implied.

Chattels to the Value of 10s. and that he hath not, nor had at the Time of exhibiting of the Bill of the said P. nor hath ever since had any Goods or Chattels which were the said D. E.'s the Intestate, at the Time of his Death in his Hands to be administered, except the said Goods and Chattels to the Value of the said 10s. which are not sufficient to satisfy the said several Debts, due on the said Judgments as aforesaid, and which are subject and liable towards Satisfaction thereof: And this he is ready to verify: Wherefore he prays Judgment if the said P. ought to have or maintain his said Action against him for the same.

R. Draper.

And the said D. by E. F. his Attorney comes and defends the Force and Injury, when, &c. and says, That he cannot deny but that he assumed upon himself in Manner and Form as the said P. hath above in his Declaration alledged; yet the said D. in Discharge of his Person from Execution to be had or adjudged in this Behalf says, That he the said D. on the first Day of February in the Year of our Lord 1728, was beyond the Seas in Foreign Parts, and was a Person enabled and qualified in the Manner mentioned in a certain Act made at the Session of Parliament of his present Majesty, holden at Westminster in the County of Middlesex, on the 21st Day of January in the second Year of his Reign, intituled, *An Act for the Relief of Insolvent Debtors*, to return and surrender himself; and the said D. accordingly returned and surrendered himself a Prisoner to

Plea, that Defendant was discharged by Virtue of the Statute 2 Geo. II. for Relief of Insolvent Debtors.

Declarations, &c.

Implied. to his said Majesty's Prison, called the *Marshalsea* Prison in the County of *Surry*, on the — Day of — in the — Year of his said Majesty's Reign; and that he the said *D.* afterwards, to wit, at the general Quarter-Sessions of the Peace of his said Majesty, holden at *Southwark* in the said County of *Surry*, by Adjournment, in and for the said County of *Surry*, on — the — Day of — in the — Year of his said Majesty's Reign, was duly discharged from his said Imprisonment, according to the Form and Effect of the said Act: And the said *D.* further says, That the said several Debts mentioned in the said Declaration were contracted before the said 1st Day of *February* in the Year of our Lord 1728 aforesaid: And this he is ready to verify: Wherefore he prays Judgment, and that the said *P.* may be barred from having Execution in this Behalf to charge the Person of the said *D.* &c.

G. Eyre.

Plea, that Defendant was discharged by the Statute 2 Geo. 2 for Relief of Insolvent Debtors.

And the said *D.* by *E. F.* his Attorney comes and defends the Force and Injury, when, &c. and says, That he cannot deny the said Action of the said *P.* nor but that he the said *D.* ought to recover his Damages on Occasion of the Premisses against the said *D.* but he the said *D.* further says, That the said *P.* ought not to have any Execution of the Damages to be adjudged to the said *P.* in this Particular, against the Person of the said *D.* because he says, That the several Causes of Action aforesaid, in the said Declaration mentioned, accrued and every of them accrued to the said *P.* before the 29th Day of

September

On Parol Promises.

171

Implied.

September in the Year of our Lord 1728, mentioned in a certain Act made at the Session of Parliament of his present Majesty, holden at *Westminster* in the County of *Middlesex*, on the 21st Day of *January* in the second Year of his said Majesty's Reign, intituled, *An Act for the Relief of insolvent Debtors*; And that he the said D. for the Space of one whole Year, before the first Day of *February* in the Year of our Lord 1728 aforesaid in the same Act mentioned, was employed as a Workman in the Trade of a Brewer within this Kingdom, to wit, at *W.* aforesaid, which said Trade was a Trade for all that Time, and yet is a Trade of this Kingdom; and that he the said D. on the said first Day of *February* in the Year of our Lord 1728 aforesaid, was actually beyond the Seas in Foreign Parts, to wit, at —, and was a Person enabled and qualified in Manner and Form, as in the said Act is mentioned, to return and surrender himself to Prison, and afterwards, to wit, on the — Day of — in the Year of our Lord —, first returned from Parts beyond the Seas within this Kingdom, and the same Day and Year surrendered himself to the Custody of the Marshal of the *Marshalsea* of our Lord the King before the King himself, called the King's Bench at *Southwark* in the County of *Surry*; and that he the said D. afterwards, to wit, at the general Quarter-Sessions of the Peace of our Lord the now King, holden at *Southwark* by Adjournment, in and for the said County of *S.* to wit, on — the — Day of — in the — Year of the Reign of the said Lord the King, before G.

Implied.

H. and J. K. Esqrs. and others their Companions, then Justices of the said Lord the King, assigned to keep the Peace in the said County of *Surry*, and to hear and determine concerning divers Trespasses, Felonies and other Misdemeanors committed in the same County, was in due Manner, according to the Form of the said Act, freed and discharged from his said Imprisonment, without this, that the said D. at any Time after the making of the said Act, undertook in Manner and Form as the said P. above complains against him; And this he is ready to verify; Wherefore he prays Judgment whether the said P. ought to have any Execution of the Damages to be adjudged to the said P. in this Behalf against the Person of the said D. &c.

It may be here observed, that the foregoing Instances of Declarations and Pleadings are chiefly founded on Non-feasances, expressed either in Writing, or by Word, and which include all the Species of Actions founded on express Promises, i. e. Assumpsits, Indebitatus Assumpsits, Quantum Meruits, Quantum Valebants, Mutuatus's, Insimul Computassents, before specified. But there are other Declarations which are founded upon Promises by Implication, i. e. such Promises as are raised by an Implication in Law, as not taking Care of one's Fire, whereby another's House is burnt; not cleansing one's Ditch, whereby my Land is overflowed; not placing a Buoy in the River, whereby my Vessel is hurt by an Anchor; not repairing ones Fences, whereby my Corn or Grass is trodden down, or eaten by others Cattle, &c.

A Decla-

A Declaration for not repairing one's Fences, whereby the Plaintiff's Beasts escaped and were impounded.

York, to wit. **H.** K. late of B. in the Coun-

ty aforesaid, Gentleman, was attached to answer to T. H. Knt. of a Plea of Trespas on the Case, and whereupon he the said T. by J. A. his Attorney complains, That whereas the aforesaid T. on the first Day of September in the Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. was seized (possessed) and yet is seized (possessed) &c. of and in a certain Close call'd the *Willowbeer*, situate, lying and being in B. aforesaid, which said Close now is, and from the Time whereof the Memory of Man is not to the contrary, hath been next adjoining and contiguous to a certain Close of the said H. called F. in B. aforesaid in the County aforesaid, on the South Side thereof; which said Close of him the said H. during the whole Time aforesaid, hath been and still is next adjoining and contiguous on the East Part thereof, to a certain common Field call'd *East Common*, situate in B. aforesaid in the County aforesaid: And whereas he the aforesaid H. and all those whose Estate the same H. now hath of and in the aforesaid Close call'd F. have used and been accustomed to repair and amend the Hedges and Fences between the Close of the said T. called W. and the Close of him H. called F. with all necessary Reparations, as often

In C. B.

Not repairing Fences, &c.

See Lilly's

Entr. 69.

2 Salk. 768.

Prescription,

to repair, &c.

*Implied.
The Cause of
Action.*

often as was needful; yet he the aforesaid *H.* contriving and maliciously intending wholly to bar and deprive the said *T.* from all Profit and Benefit of his said Close, did afterwards, to wit, on the said first Day of *September* in the Year aforesaid, permit and suffer the Hedges and Fences aforesaid, so separating and dividing the aforesaid Close of the said *T.* call'd *W.* from the said Close of him *H.* call'd *F.* to be broken, laid open, and greatly decay'd for Want of Reparation, and also the Hedges and Fences of his said Close called *F.* separating and dividing his said Close called *F.* from the said Common Field called *E. C.* to be also broken, thrown down, and greatly decay'd; whereby one Cow of him the said *T.* of the Price of *5 l.* on the said first Day of *September* in the Year aforesaid, then depasturing in the said Close of him *T.* called *W.* did through the Gaps and Breaches of the said Hedges escape and stray from the said Close of him the said *T.* call'd *W.* into the aforesaid Close of him the said *H.* call'd *F.* and from thence for Default of repairing of the said Fences by him the said *H.* as aforesaid, into the aforesaid Common Field, called *E. C.* whereby he the said *H.* afterwards, to wit, on the said first Day of *September* in the Year aforesaid, did take the said Cow of him the said *T.* so being found in the said Common Field, called *E. C.* and then impounded the same Cow at *B.* aforesaid; which said Cow so being in the Pound aforesaid, and by Means of the said Impounding, afterwards, on such a Day in the Year aforesaid, there died; wherefore he the said *T.* saith, That he is injured, and hath

On Parol Promises.

175

hath Damage to the Value of 7*l*. And there-
of he brings this Suit, &c.

Implied.

Michaelmas Term in the Sixth Year of the
Reign of King George the Second.

Borrett,

Southamp. to wit. J. S. late of Croudall in the said County of
Southampton, Yeoman, was attached to an-
swer R. D. in a Plea of Trespass on the Case;
and whereupon the said R. D. by J. L. his
Attorney complains, That whereas the said
R. D. on the first Day of *October* in the sixth
Year of his present Majesty's Reign, was
seized and still is seized in his Demesne as
of Fee of and in one Close, called the
Kitchin Garden, situate, lying and being
in Croudall afore said in the said County of
Southampton, to which said Close, called the
Kitchin Garden, another Close in the Posses-
sion, Tenure or Occupation of the said J.
S. called the Hop Garden at Croudall afore-
said in the said County of *Southampton*, lies
next and contiguous adjoins, between which
said Close of the said R. D. called the Kitch-
in Garden, and the said Close in the Tenure
or Occupation of the said J. S. called the
Hop Garden, there now is, and Time out
of Mind has been, certain Pales or Fences
which part and divide the said Closes the
one from the other: And whereas the said J.
S. and all Occupiers and Possessors of the said
Close called the Hop Garden, for the Time
being, Time out of Mind were used and ac-
customed

Declaration for
not repairing
of Fences.

Implied.

customed, and ought to make, repair and amend the said Pales and Fences between the said Close of the said R. D. called the Kitchen Garden, and the said Close of the said J. S. called the Hop Garden, with all necessary Reparations and Amendments, as often as Need should be or require, lest any Cattle out of the said Close, called the Hop Garden, unto the said Close, called the Kitchen Garden, should escape and enter, and do Damage there: Nevertheless the said J. S. not ignorant of the Premisses, but contriving and fraudulently intending the said R. D. in this Behalf unjustly to damnify and deprive him of the whole Benefit, Profit and Advantage of the said Close, called the Kitchen Garden, afterwards, to wit, on the first Day of *October* in the said sixth Year of his present Majesty's Reign, and from thence to the first Day of *January* in the said sixth Year of his said present Majesty's Reign, the Pales and Fences, separating and dividing the said Close, called the Kitchen Garden, and the said Close called the Hop Garden, one from the other as aforesaid, permitted to remain and continue ruinous, broken, and in decay, for Want of repairing the same; by Means whereof the Cattle, Hogs, and Sheep of the said J. S. and of divers other Persons to the said J. D. unknown, on the said first Day of *October*, and on several Days and Times between the said first Day of *October* and the first Day of *January* in the said sixth Year of his present Majesty's Reign, out of the Close of the said J. S. called the Hop Garden, into the Close of the said R. D. called the Kitchen Garden, broke
and

177

Implied.

Issue.

Venire;

Implied. Contention is, have put themselves upon that Jury.

A Declaration for not taking Care (i. e. negligent keeping) of his Fire.

In B. C.
For neglecting
his Fire.
See Lilly 69.
Note; This is
laid on the
Custom of
England, see
3 Lev. 356.

Middlesex, to wit. **R.** *B.* late of London, Esq; was attached to answer to *J. W.* Gentleman, of a Plea of Trespas on the Case; and whereupon he the said *J. W.* by *J. L.* his Attorney, complains, That whereas, according to the Law and Custom of *England* hitherto used and approved, every Person within *England* aforesaid, is (and hath been beyond the Time whereof the Memory of Man is not to the contrary) bound to keep his Fire by Night and by Day, so that for Default of keeping his said Fire no Damage may in any Manner happen to his Neighbours; yet the said *R. B.* on the 10th Day of *August* in the fourth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. did so negligently and carelessly keep his Fire at the Parish of *St. Martin in the Fields* in the said County of *Middlesex*, That for Default of the good keeping of that Fire, one Mansion House of him the said *J. W.* (in the Parish and County aforesaid, being in the Possession of him *J. W.* and of which he the said *J. W.* was then and there, and yet is possessed for the Remainder of a Term of Eleven Years then to come; which said Term did begin at the Feast of *St. M.* in the 13th Year of the Reign of our late Sovereign

On Parol Promises.

179

Implied.

Sovereign Lord George the First, late King of Great Britain, &c.) was burnt down, and by the said Fire consumed; and also divers Goods of him the said J. W. in the same House then being, were thereby destroy'd, to wit, one Study of Books, four Turkey-Work Carpets, four Mahogany Tables, three Scrutores, &c. (naming all the Goods, Linen and Woollen Apparel, Plate, &c. lost) amounting in the Whole to the Value of 1500*l.* to the great Loss and Damage of him J. W. whereof he the said J. W. saith, That he is injured, and hath Damage to the Value of 1500*l.* And thereof he brings this Suit, &c.

A Declaration for not putting a Buoy to an Anchor, whereby the Plaintiff's Ship was split, bulged, &c.

Middlesex, to wit. **G.** H. complains of **M.** *In B. R.*
G. F. being in the *For not putting a Buoy to an Anchor,*
 Custody of the Marshal of the *Marshalsea* of *&c. Mich.*
 our Lord the King, before the King himself, *10 W. 3.*
 for that, to wit, whereas he the aforesaid **G.** *See Lilly 80;*
 on the 23d Day of *September* in the Year of
 the Lord 1730, at the Parish of *Stebonheath*,
 otherwise *Stepney* in the County aforesaid,
 was and yet is the Master of a Ship called
 the *H.* then and there being in the River of
Thames in the Parish and County aforesaid,
 the said River then being a Navigable River,
 and common Highway; which said Ship was
 then moored to the Shore in the Parish and
 County aforesaid: And whereas he the aforesaid
M. on the same Day and Year, and before,

Implied. fore, was and yet is Master of a Ship call'd the R. then and there being near the said Ship of him the said G. H. he the said M. contriving and maliciously intending very much to hurt and prejudice the said G. did then and there cast a certain Anchor affix'd to a Cable out of the said Ship call'd the R. into the said River; and permitted the said Anchor to lie there by the Space of ten Hours, during which Space he the said M. did not affix any Buoy to the said Anchor, to shew where the said Anchor was placed; by Reason whereof the said Ship of the said G. call'd the H. afterwards, to wit, on the Day and Year aforesaid, in the Parish and County aforesaid, did on the Ebbing of the Tide, for Default of affixing a Buoy to the said Anchor in the said River of *Thames*, in the Parish and County aforesaid, fall upon the said Anchor, for the said Default of the aforesaid M. and by Means thereof was so much Broken that the same Ship then and there sunk, &c. And whereas, for that, to wit, That by the Custom of *England* used and approved, from the Time whereof the Memory of Man is not to the contrary, all Masters of Ships, whose Ships are riding at Anchor, in any Navigable River within *England*, have used, and for the whole Time aforesaid have been accustomed, and ought to fix a Buoy to the Anchors which hold their said Ships, whereby the other Ships being in that River, may by observing the said Buoy, avoid the same Anchors, so that they may not be damaged by them: And also whereas he the said G. afterwards, to wit, on the aforesaid 30th Day of *December* in the Year last aforesaid,

*The Custom
set forth, &c.
Note; The
Declaration
might have be-
gun with this.*

*2d Count.
Of the same
Ship.*

bovesaid, at the said Parish of *Stebonheath*, *Implied.* otherwise *Stepney*, in the County aforesaid, was and yet is Master of another Ship call'd the *H.* then being in the said River *Thames* in the Parish and County aforesaid; which said Ship was moored to the Shore, in the Parish and County aforesaid: And whereas the aforesaid *M.* was then and there Master of a certain other Ship call'd the *R.* lying at Anchor in the aforesaid River *Thames* in the Parish and County aforesaid, near the said last mentioned Ship of him the said *G.* yet he the said *M.* contriving and maliciously intending very much to injure and prejudice him the said *G.* did then and there cast a certain Anchor into the aforesaid River *Thames* in the Parish and County aforesaid, near the said last mentioned Ship of the said *G.* to which Anchor he the said *M.* ought to have affixed a Buoy according to the Custom aforesaid. Yet he the said *M.* then and there continued the said Anchor in the said River *Thames*, for the Space of Twenty Hours then next following, without any Buoy being affixed to the Anchor of the said last mentioned Ship of him *M.* whereby the said last mentioned Ship of him the said *G.* afterwards, to wit, on the Day and Year afovesaid, in the Parish and County aforesaid, did on the Ebbing of the Tide, for Default of affixing a Buoy to the said Anchor of the last mentioned Ship of the said *M.* in the said River *Thames* in the Parish and County aforesaid, fall upon the said Anchor of him *M.* whereby the said last mentioned Ship of the said *G.* being laden with Sea-Coals, and falling on the said Anchor of the said *M.*

Implied. so left without a Buoy as aforesaid, was so much split and torn that the same Ship then and there sunk: Whereupon the said G. saith, That he is injured, and hath Damage to the Value of 200*l.* And thereupon he brings this Suit, &c.

A Declaration by an Occupier of Land, against the Rector, for not taking away Tithe-Hay set out.

Note; The Original seems to be laid in the Liberty of Battle in Suffex.

See Lilly 19.

Suffer, to wit. **R.** S. complains against J. D. Clerk, of a Plea of Trespass on the Case; and there are Pledges of the Prosecution, to wit, J. Doe and R. Roe; and whereupon the said R. by E. P. his Attorney, complains, That whereas the said J. D. on the 23d Day of June in the third Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. was, and long before and continually afterwards hitherto hath been, and yet is Rector of the Parish Church of W. in the County of S. and within the Jurisdiction of this Court: And also whereas the Tithes of Corn, Grain and Hay, within the Parish aforesaid, from Time to Time growing, renewing or arising within the said Parish are payable, and from the Time whereof the Memory of Man is not to the contrary, hath been payable to the Rector of the said Church for the Time being; and the Owners of any Sheafs, Grain and Hay growing, renewing and arising within the said Parish, have during the whole Time aforesaid, been used and accustomed, and ought to separate,

lay out, and leave the tenth Part or Tithes of their said Corn, Grain and Hay, divided and separated from the nine Parts, for the Use of the Rector of the said Church for the Time being, which said Tithes so as aforesaid divided, separated, laid out and left, the Rectors of the said Church for the Time being have, at their own proper Charges and Costs, within convenient Time after the Division, Separation, laying out, and leaving thereof, and Notice to them given, been used, and ought to take and carry away from off the said Lands upon which the same Tithes grew, renewed and arose: And also whereas he the said R. on the 24th Day of *June* in the third Year of the Reign of our said Sovereign Lord *George* the Second, now King of *Great Britain, &c.* and long before and continually afterwards hitherto hath been, and yet is Possessor and Occupier of a certain Close of Meadow Land, with the Appurtenances, called the *King's Hill*, otherwise *Kingsland Meadow*, lying in *W.* aforesaid (and within the Jurisdiction aforesaid) containing by Estimation 18 Acres; and being so thereof possessed he the said R. afterwards, to wit, on the 28th Day of *June* in the Year aforesaid, mowed the same Meadow, and then and there, within the same Jurisdiction, made the Grass so mowed into Cocks of Hay, and after the said Hay was so put into Cock, did also then and there (within the same Jurisdiction) in due Manner divide and separate the Tithe or tenth Part from the other nine Parts, and laid out and appointed the same tenth Part for the Use of the said *John* (to be taken and car-

Implied.

*This Notice
seems needless.*

ried away by the said *John*) then and yet Rector of the said Church; And also he the said *R.* did afterwards, to wit, on the 29th Day of *June* in the Year aforesaid, at *W.* aforesaid, and within the Jurisdiction aforesaid, give Notice thereof to the said *J.* the said then and yet Rector of the said Church; yet he the said *J.* being not ignorant of the Premises, but contriving and maliciously intending to hinder and deprive him the said *R.* from having and receiving the Profits of the said Close, did not take or carry away from off the said Close the said Tithes, or tenth Part of the said Hay, to wit, twenty-five Cocks of Hay, so divided separated, laid out and left for Tithes as aforesaid, but permitted and suffered the said twenty-five Cocks of Hay to stand and remain for a long Time upon the said Land, to wit, from the said 29th Day of *June* until the 26th Day of *August* then next following, whereby he the said *R.* the Profit of the said Close during that Time totally lost, and was deprived of, to the Damage of him *R.* 5*l.* And thereupon he brings his Suit.

*And here give me leave to insert a few other
Precedents relating to Tithes.*

*A Declaration on the Statute 1 Edw. 6.
for not setting out Tithes of Sylva Cædua,
&c.*

*In C. B. For
not setting out
Tithes, &c.
See Lilly 75.*

*Hertford, to wit. J. M. late of B. in the Coun-
ty aforesaid, Knight of
the Bath and Baronet, was summoned to an-
swer*

On Parol Promises.

185

Implied.

swer to *T. M.* of a Plea, That he render to him 144*l.* which he owes to him, and unjustly detains, and whereupon he the said *T. M.* by *C. N.* his Attorney saith, That whereas by a certain Act of Parliament of the Lord *Edward* the Sixth, late King of *England*, at *Westminster* in the County of *Middlesex*, it was among other Things Enacted, by the Authority of the same Parliament, That every Subject of the Lord the King should thence-forward truly, and without Fraud or Covin, divide, set out, yield and pay all his Predial Tithes in their proper Kind, as the same should renew or happen in such Manner and Form as the same Tithes were of Right rendered and paid within Forty Years next before the making of that Act, or of Right or Custom ought to have been paid; and that no Person should thenceforth take or carry away any such or the like Tithes, which had been accustomably rendered or paid within the said Forty Years, or of Right ought to have been paid in the Tithable Place or Places of the same before he had justly divided or laid out, for the Tithes thereof, the tenth, or other Customary Part of the same, or otherwise agreed for the same Tithes, with the Rector, Vicar, or other Owner, Proprietor or Farmer of the same Tithes, under the Penalty of *treble the Value* of what should be so taken or carried away, as by the same Act may among other Things more fully appear: And also whereas he the said *T.* after the making of the said Act, to wit, on, &c. and long before, was, and always since hitherto hath been, and still is Farmer of all and singular the Tithes of
Sheaf-

*The Recital of
the Statute
Quære, and
See the Stat.*

The Forfeiture.

Implied.
Note; Plain-
tiff Farmer of
Tithes in W.
&c.

Of Wood and
Treeslopt, &c.
But Note; no
Tithes of Wood
is due of com-
mon Right,
Carth. 393,
&c. ibid.

Sheaf-Corn, Grain, Wood and Hay belong-
 ing to the Rector of C. in the said County of
 Hertford, lying within the Ward or Division
 thereof, commonly called or known by the
 Name of W. [including such and such Pa-
 rishes, or rather shewing the particular Boun-
 daries.] And also whereas the aforesaid J. M.
 being a Subject of the Lord the now King,
 and a Freeman of England, on such a Day
 and Year of the said Lord the now King,
 was an Occupier of 200 Acres of Wood-
 Lands, commonly called C. Woods, with the
 Appurtenances, lying and being in the Parish
 of C. &c. aforesaid, of which said 200 Acres
 of Wood-Land, the Tithes of Wood and Un-
 der-wood, with the Tops and Lopps of the
 Trees, (commonly call'd *Silva Cadue*) under
 Twenty Years growth, in and upon the same
 Lands standing, growing or renewing with-
 in Forty Years next before the making of the
 said Act, were accustomed, and ought of
 Right to be paid in their proper Kind and
 Species by the Occupier or Occupiers of the
 same Lands for the Time being to the said
 Rector of C. or to his Farmer or Deputy, or
 other Proprietor of that Rectory, or of the
 Tithes thereof, for the Time being; and he
 the said J. being Occupier of the said 200
 Acres of Wood-Land, with the Appurte-
 nances as aforesaid; and he the said J. be-
 ing Farmer of the said Tithes in Manner as
 aforesaid, he the said J. afterwards, to wit,
 on the Third Day of January in the —
 Year, &c. aforesaid, did cut down the Wood,
 Underwood, and Lop and Top the Trees
 standing, growing, &c. in and upon 50 Acres
 being Part of the said 200 Acres of Wood-
 Lands,

Lands, being *Silva Cedua*, and under the Growth of Twenty Years; And also after the said cutting down of the said Under-wood, and topping and lopping of the said Trees so standing, growing, increasing and renewing on the said 50 Acres as aforesaid, to wit, on the said third Day of *January* in the Year aforesaid, at C. aforesaid, he the said J. did take and carry away and sell, or otherwise dispose of to his own Use and Benefit, without setting out the Tithes, or tenth Part of the Wood and Under-wood so cut, lopt and topt for the Use of the said Rector (as of Right he the said J. ought to have done) and without any Agreement or Satisfaction made by him the said J. with or to the said T. for the Tithes of the said Wood so cut, topp'd and lopp'd as aforesaid.

Implied.

Cause of Action, not setting forth the Tithes.

Note; *This in the Original is laid over again on three or four other Counts, too prolix to be here inserted; and then it concludes with an Averment of the Value of the Tithes, &c. thus:*

And the same T. in Fact saith, That the Value of the Tithes of the said Wood and Under-wood so cut and topp'd and lopp'd as aforesaid, were at the Time of their cutting, topping and lopping, and of their being taken and carried away by the said J. as aforesaid, to wit, such a Day and Year, at such a Place, &c. aforesaid of the Value of 10*l.* of lawful Money of *Great Britain*, (and the like Averment for every Year the Tithes were not set forth, &c. *i. e.* three Years) which said several Sums of Money do in the whole amount to 30*l.* of like lawful Money, by Reason of which

Averment of the Value.

*Expressed.
And Notice.*

*Quere, if
Notice is ne-
cessary?*

which said Premisses, and by Force of the Statute aforesaid, an Action hath accrued to the said *T.* to demand and have of the said *J.* the Sum of 90*l.* to wit, the Treble Value of the said Tithes of the said Wood and Under-wood so cut, topp'd and lopp'd, and taken and carried away by the said *J.* he not having divided or set forth the Tithes thereof as aforesaid, whereof he the said *J.* had afterwards, to wit, such a Day and Year, at such a Place, Notice given him by the said *T.* yet he the said *J.* though oftentimes afterwards, to wit, at *B.* in the said County of *H.* thereto requested, hath not paid the said 90*l.* to him the said *T.* but hath hitherto refused, and still doth refuse, to pay the same to him; wherefore he saith, That he is injured, and hath Damage to 10*l.* And thereupon he brings this Suit, &c.

*A Declaration for not paying small Tithes
to the Vicar, (on an Agreement.)*

*In C. B. For
small Tithes
to the Vicar,
Clift 69.*

Cambridge, to wit. **W**. *P.* late of *W.* in the County aforesaid, Innholder, was attached to answer to *R. B.* the younger, Clerk, of a Plea of Trespass upon the Case, and whereupon the said *R.* by *T. S.* his Attorney complains, That whereas he the said *R.* for Three Years next before the 26th Day of *March* in the 5th Year of the Reign of our Lord the now King, was, and yet is Vicar of the Vicarage and Parish Church of *B.* in the County aforesaid, and by Reason thereof, during the whole Time aforesaid, it hath belonged, and yet

Expressed.

yet doth belong to him the said R. to have and take, or to permit some other Person or Persons to have and take all and singular the small Tithes belonging to the said Vicarage, arising, growing, or renewing within the same Time, in the said Parish of B. And whereas the said W. on the said 26th Day of *March* in the Year aforesaid, at B. aforesaid, was indebted to the said R. being then Vicar of the said Vicarage as aforesaid, in 32*l.* of lawful Money of *Great Britain*, for certain small Tithes to the said Vicarage belonging, which by Permission of the said R. then and now the Vicar of, &c. as aforesaid, were by the said W. according to a certain Agreement before the said Day had and made between them the said R. and W. taken, and to the proper Use of him the said W. And being so indebted he the said W. afterwards, to wit, on the same 26th Day of *March* in the Year aforesaid, at B. aforesaid, in Consideration thereof, undertook, &c. as before in other Assumpsits. And also whereas he the said W. (afterwards, *Vide ante*, to wit,) on the same 26th Day of *May* in the 5th Year aforesaid, at B. aforesaid, in Consideration that he the said R. the Vicar of the Vicarage aforesaid, had at the Special Instance and Request of him W. agreed with him the said W. that he the said W. should *Assumpsit.* take and have certain other small Tithes belonging to the said Vicarage, and that he the said W. had according to that Agreement, taken and had the same Tithes, he the said W. then and there did undertake, &c. and unto the said R. well and faithfully promised, That he the said W. would well and faithfully pay to the said R. 16*l.* of like lawful Money

Expressed. Money for the said last mentioned Tithes so taken and had as aforesaid (*with a third Count, That in Consideration R. had on two Requests permitted W. to take and have certain other small Tithes belonging to the said Vicarage, W. promised to pay for them to R. as much as they were worth, and R. avers they were worth 16l. of like lawful Money. See the Forms of Quantum valebants before*) to wit, at B. aforesaid, whereof the said W. had then and there Notice; yet he the said W. not regarding his said several Promises and Undertakings so made as aforesaid, but contriving and fraudulently intending craftily, &c. (*as in other Assumpsits*) See before.

A Quantum valebant.

A Declaration on a Composition for Tithes.

*In C. B.
On a Composition for
Tithes, ibid.
70.*

Suffolk, to wit. J. W. in the County of Cambridge, Yeoman, was attached to answer to O. M. of a Plea of Trespass on the Case, and whereupon the said O. by A. B. his Attorney complains, That whereas he the same O. was on the third Day of May in the Year of the Lord 1730 lawfully possessed of and in the Rectory impropriate of the Parish Church of Eyming in the said County of S. for the Term of four Years and more, then next following, by Virtue of a certain Demise before that Time made thereof in Writing by the Dean and Chapter of the Cathedral Church of Canterbury: And whereas he the said J. on the said third Day of May in the Year of the Lord 1730 aforesaid, was lawfully possessed of 20 Acres of Arable Land, lying within

within the said Parish, and the Bounds, Limits and Tithable Places of the same Parish; and whereas on the same Day and Year it was at *Eyming* aforesaid agreed between the same O. and the said J. That he the said J. should retain and take, and have to his own proper Use all and singular the Tithes whatsoever, which within three Years then next following should grow, arise, come or renew in and upon the said 20 Acres of Arable Land with their Appurtenances; and that he the said J. should yearly and every Year during the same three Years, pay Fifteenpence for every Acre of the said twenty Acres of Land (with their Appurtenances) in the Name and Stead, and in full Satisfaction and Discharge of all and singular the Tithes whatsoever, which should within that Time grow, arise, come or renew in and upon the same Lands, and that the said O. should take upon himself, and Discharge the whole Burthen, called Town-Charge, for those Lands during the said three Years; and he the said J. afterwards, to wit, on the same third Day of *May* in the Year of the Lord 1730 aforesaid, in Consideration that the said O. had at the Special Instance and Request of him the said J. undertaken, and unto the same J. then and there faithfully promised to perform the said Agreement in all Things on his Part to be performed, did unto the same O. then and there faithfully promise, That he the said J. would well and truly perform the same Agreement in all Things on his Part to be perform'd: And also whereas he the aforesaid J. afterwards, to wit, the 26th Day of *April* in the Year of the

Mutual Contracts.

Expressed. the Lord 1731, at *Eyming* aforesaid, was indebted to him the said O. in 25 s. for other Tithes of Grain before that Time sold by the said O. to the said J. and by him the said J. by way of Retention before that Time had and received (being the Tithes growing, arising, coming, renewing, from in and out of the said Lands of the said J. in *Eyming* aforesaid) and being so indebted, he the same J. in Consideration thereof, afterwards, to wit, on the Day and Year last aforesaid, at *E.* aforesaid, undertook, and unto the same O. then and there faithfully promised to pay the said 1 l. 5 s. on, &c. and the said O. in Fact saith, That all and singular the Tithes of the Grain growing or arising from and of the said twenty Acres within the first Year of the said three Years had and received by the said J. by Way of Retainer, according to the Agreement aforesaid, were due to the said O. at, or upon, &c. and that 1 l. 5 s. were then due to him the said O. for the same, according to the same Agreement; yet he the said J. not regarding his said several Promises and Undertakings so made as aforesaid, but contriving, &c. (*See in Assumpsits, ante.*)

Verment.

The Entry of the Declaration and Pleadings in the Case of Tenant and Goldwin, for not repairing a Partition-Wall, whereby the Plaintiff was prejudiced.

Pleas before our Lady the Queen at Westminster, of Trinity Term in the third Year of the Reign of our Sovereign Lady Anne, now Queen of England, &c. Rol.

211.

Middlesex, to wit. **B**E it remember'd, that heretofore, that is *In B. R. Non-feasance in a Partition Wall, &c. See 2 Salk. 766. Ibid. 21. 360.* to say, in *Easter* Term last past, before our Lady the Queen at *Westminster* came *R. T.* by *J. R.* his Attorney, and brought into the Court of our said Lady the Queen then there his certain Bill against *L. G.* being in the Custody of the Marshal of the *Marshalsea* of our said Lady the Queen, before the Queen herself, of a Plea of Trespass on the Case, and there are Pledges of the Prosecution, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit, *Middlesex, to wit, R. T.* complains of *L. G.* being in the Custody of the Marshal of the *Marshalsea* of our Lady the Queen, before the Queen herself; for that, to wit, *O* That

Implied.



That whereas he the said R. on the first of *October* in the first Year of the Reign of our Sovereign Lady *Anne*, now Queen of *Great Britain*, &c. and always from thence hitherto hath been, and still is possessed of a Mesuage or House, situate, lying, and being in *Frieth-street*, in the Parish of *St. Anne*, within the Liberty of *Westminster* in the aforesaid County of *Middlesex*, for a certain Term of Years not yet ended, and in a Cellar, Parcel of his said Mesuage, hath used and been accustomed to lay up and keep Coals and Ale for the Use of his Family, and for Sale to divers Persons who were wont and accustomed to buy the said Commodities of the said R. in his Mesuage or House aforesaid, to his the said R.'s great Gain and Profit, which said Cellar lies contiguous, and during the whole Time aforesaid, hath lain contiguous to a certain Mesuage of the said L. in the Parish aforesaid, and been used to be kept and separated from a Draught-Vault, Parcel of the said Mesuage of the said L. by a thick and close compacted Wall belonging to the said Mesuage of the said L. and which, during the whole Time aforesaid, ought of Right to have been repaired by the said L. yet he the said L. being not ignorant of the Premisses, but contriving and fraudulently intending to injure and prejudice the said R. unjustly in this Particular, and wholly to deprive the said R. of and from the Use and Benefit of the said Cellar of his said Mesuage, and to hinder him of the Profit of his Trade and Business aforesaid, on the said first Day of *October* in the same — Year of the Reign of our Sovereign Lady the now Queen,

Averment of Usage.

Breach.

Implied.



Queen, as abovesaid, and from thence always hitherto (although he the said R. hath oftentimes, to wit, on the first Day of *October* in the Parish aforesaid, requested the said L. to repair the same) hath so negligently kept and repaired the said Wall, that for Default of due Reparation and Amendment of the same Wall, the Dung and Filths, Nastinesses in the said Draught-Vault, did issue and flow from the same Draught-Vault, through the Clefts, Crannies, Chinks of the said Wall into the said Cellar of the said R. and thereby over-flow'd the same Cellar, and rendered it unfit for the Trade and Business of him the said R. during the Time aforesaid, whereby he the said R. during the said Time, to wit, in the Parish aforesaid, was much prejudiced, and totally lost the Use of his said Cellar: Whereupon he the said R. saith, That he is injured, and hath Damage to the Value of 100*l.* And thereupon he brings this Suit, &c.

Damage.

And now at this Day, to wit, on *Wednes-* day next after the Morrow of Holy *Trinity* in this same Term, until which Day the said L. had Leave to imparl to the Bill aforesaid, and then to answer thereto, came the said R. by his said Attorney, and prays, that the said L. may answer to his Declaration aforesaid; and he the said L. although he was solemnly demanded at the same Day, doth not come, nor saith any Thing in Bar or Preclusion of the said Action of the said R. whereby he the said R. remains thereof against him undefended, for which the said R. ought to recover his Damages against the said L. But because it is unknown to the

Imparance,
&c.

Judgment by
Nil dicit.

Implied.

Inquiry a-
warded.

Court of the said Lady the Queen now here, before the Queen herself, what Damages the said R. hath by Occasion of the Premisses sustained in this Particular: Therefore it is commanded to the Sheriff that he diligently inquire by the Oath of good and lawful Men of his Bailiwick, what Damages the said R. hath sustained as well by Occasion of the Premisses, as for his Charges and Costs laid out by him about his Suit in this Particular, and that the Inquisition, which he shall take thereof, he send to our said Lady the Queen at Westminster, on Monday next after three Weeks of St. Michael, under his Seal, and the Seals of those by whom he shall have taken that Inquisition, together with the Writ of our Lady the Queen thereupon to him directed: The same Day is given to the said R. there, &c.

A Declaration by the present Mayor against a late Mayor, &c. for not delivering up the Insignia, on the Expiration of his Office (reciting a Mandamus, &c.)

In B. R.
Non-feasance
in not deliver-
ing up the En-
signs of May-
oralty.

Lilly 48, 49.

Middlesex, to wit. J. B. Gent. Mayor of the City of Coventry, complains of T. P. late Mayor of the said City of C. and E. O. pretended Mayor of the same City, being in the Custody of the Marshal, &c. For that, to wit, That whereas the said City of C. is an ancient City, in which said City for many Years now last past there hath been, and yet is a Mayor of the same City: And also whereas the Ensigns of the Mayoralty of the said City, to wit, the Mace and the

Implied.

the Sword, and also the Corporation Seal of the said City, together with the Keys of the Council-House of the City aforesaid, do belong and of Right appertain, and for many Years last past have belonged and of Right appertained to the Place and Office of Mayor of the same City : *And also whereas* the foresaid *J. B.* on the 13th Day of *October* in the third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain, &c.* was at the said City of *C.* in the County of the same City, duly elected into the Place and Office of Mayor of the same City; and he the said *J. B.* was also on the first Day of *November* in the third Year aforesaid, in the County of the same City, duly admitted into the Place and Office of Mayor of the said City for one whole Year thence next following; and by Reason thereof the said Ensigns of the Mayoralty of the said City, *to wit*, the Mace and Sword of the said City, together with the Corporation Seal of the said City, and also the Keys of the Council-House of the said City, do belong and of Right appertain to him the said *J. B.* as Mayor of the said City, and ought during the whole Time of his Mayoralty to remain in his Custody; and also he the said *J. B.* on the said first Day of *November* in the Year above, and often afterwards, did at the City of *C.* aforesaid, in the Common Council of the same City, request the foresaid *T. P.* and *E. O.* to deliver up to him the said *J. B.* the said Ensigns of Mayoralty of the said City, *to wit*, the Mace and Sword of the said City, and also the said Corporation Seal of the said City, and the Keys of the Council-House of the same City; *Which he requested the Defendants to deliver, and they refused,*

Implied. yet they the said *T. P.* and *E. O.* did then and there, and as yet do unduly and unjustly refuse to deliver up the said Ensigns of Mayoralty of the said City, *to wit,* the said Mace, (*&c. ante*) to the said *J. B.* To the no small Damage and Grievance of him *J. B.* And also whereas he the aforesaid *J. B.* for obtaining of the said Ensigns of the Mayoralty of the said City of *C.* *to wit,* the Mace, (*&c. ante*) did afterwards, *to wit,* on the 27th Day of *November* in the said third Year of the Reign of our said Lord the now King, sue forth and prosecute out of the Court of our said Lord the now King, before the King himself, the same Court then being at *Westminster* in the said County of *Middlesex*, a certain Writ of the said Lord the now King, of *Mandamus* directed to the said *T. P.* late Mayor of the City aforesaid, and *E. O.* the pretended Mayor of the same City, by which said Writ our said Lord the now King, reciting, That whereas there then remained in the Custody of the said *T. P.* and *E. O.* or one of them the Ensigns of the Mayoralty of the said City, *to wit,* the Mace and Sword, with the Corporation Seal of the same City, and also the Key of the Council-House of the said City, belonging and appertaining to the Place and Office of Mayor of the same City: *And also whereas* the said *J. B.* was duly elected into the said Place and Office of Mayor of the same City on the said 13th Day of *October* then last past, and was admitted into the said Place and Office on the said first Day of *November* then next following, for one whole Year from thence next following; to whom the said Ensigns of the Mayoralty, *to wit,* the Mace and Sword

*A Mandamus
sued out.*

*Mandamus
recited.*

Sword, (*Ec. supra*) do belong and appertain, and ought to remain in his Custody during the whole Time of his Mayoralty; and altho' the said *J. B.* the now Mayor had often requested the said *T. P.* and *E. O.* to deliver to him the said Ensigns of the said City, *to wit*, the Mace and Sword, (*Ec. supra*) yet the said *T. P.* and *E. O.* and each of them had unjustly and unduly refused, and at that Time did refuse to deliver the said Ensigns, *to wit*, the said Mace and Sword, (*Ec. supra*) unto the said *J. B.* in Contempt of our said Lord the now King, and to the no small Damage and Grievance of him *J. B.* as from the Complaint of the same *J. B.* the said Lord the now King, had then been informed: Therefore the said Lord the now King, being willing that due and speedy Justice should be done to the said *J. B.* in that particular, as was just, did by that Writ command the said *T. P.* and *E. O.* firmly injoyning them that immediately after the Receipt of the said Writ of our said Lord the now King they should deliver or cause to be delivered the said Ensigns of the Mayoralty of the said City, *to wit*, the Mace and Sword, (*Ec. supra*) unto him the said *J. B.* or should signify to our said Lord the now King Cause to the contrary, lest for Default thereof any further Complaint should thereof come to our said Lord the now King, against them the said *T. P.* and *E. O.* And how that Writ of the said Lord the now King should be executed, they should make certainly known to our said Lord the now King at *Westminster*, on *Saturday* next after the *Octave* of *St. Hilary*, by then returning the said Writ to our said

Implied. Lord the now King, which said Writ was afterwards, and before the Return thereof, *to wit*, on the first Day of *December* in the said third Year of the said Lord the now King, delivered to the said *T. P.* and *E. O.* to be executed in Form of Law, *to wit*, at *Westminster* aforesaid in the said County of *Middlesex*; yet they the said *T. P.* and *E. O.* have not delivered, or caused to be delivered the said Ensigns of Mayoralty of the City aforesaid, *to wit*, the Mace and Sword, (*&c. supra*) or any, or either of them unto the said *J. B.* according to the Command of the said Writ: But they the said *T. P.* and *E. O.* well knowing the Premisses, and further contriving and falsely and maliciously intending very much to injure the said *J. B.* in this Particular, and to deprive him of the Custody and Use of the aforesaid Ensigns of the Mayoralty of the City aforesaid, *to wit*, of the Mace and Sword, (*&c. supra*) for and during the whole Time of his said Mayoralty, have at the Return of the said Writ, *to wit*, on the said *Saturday* next after the *Octave* of *St. Hilary* in the said third Year of our said Lord the now King, falsely and maliciously returned to the said Lord the now King, into the Court of our said Lord the now King before the King himself, the same Court being then at *Westminster* aforesaid in the said County of *Middlesex*, their Answer to the said Writ in a certain Schedule annexed to the same Writ, by which said Answer so returned they the said *T. P.* and *E. O.* have certified to our said Lord the now King, That the said *J. B.* was not elected into the Office or Place of Mayor of the said City of *C.* as by the aforesaid Writ

False Return that the Plaintiff was not elected.

But one of the Defendants.

was

Implied.

was supposed ; and further, That the aforesaid *E. O.* on the aforesaid 13th Day of *October* then last past, was duly elected into the Place and Office of Mayor of the said City, and that he the said *E. O.* on the said first Day of *November* in the Year aforesaid, was duly admitted into the said Office for one whole Year then next following, and that by Reason thereof he the said *E. O.* being then Mayor of the City aforesaid, ought to have and keep the said Ensigns of the Mayoralty of the same City with the Corporation Seal and Keys of the Council-House there for and during the whole Time of the foresaid Mayoralty of the said *E.* which was not then past, and that therefore they had not delivered, nor ought to deliver the same to the said *J. B.* as by the said Writ, and the Return of the same, in the said Court of the said Lord the now King before the King himself, at *Westminster* aforesaid, filed and remaining of Record may more fully appear ; whereas in Truth and in Fact he the said *J. B.* was duly elected and admitted into the said Place and Office of Mayor of the said City of *C.* as by the Writ aforesaid was supposed ; and whereas in Truth and in Fact the foresaid *E. O.* was not duly elected or admitted into the Place and Office of Mayor of the City aforesaid, as by the Return aforesaid is above supposed : By Pretence of which said false Return so made as aforesaid, he the said *J. B.* was not only deprived of the Custody and Use of the aforesaid Ensigns of Mayoralty of the City aforesaid, *to wit*, the Mace and Sword, (*&c. supra*) and of his Remedy for obtaining of the same, but hath also laid out and expended great Sums

Averment.

Male-fea-
zance.
Sustinnit,

Sums of Money in suing out and prosecuting the said Writ of *Mandamus*; and by that Occasion is very much injured, to the Damage of him 200*l*. And thereupon he brings this Suit, &c.

See another like Declaration, viz. for not delivering up Charter-Books with the Ensigns of Mayoralty, &c. for Banbury in Oxfordshire, Lilly's Entries, p. 51.

And with this I shall conclude the Head of Non-feasances.

The next Head is of Declarations in Actions of the Case for Male-feasances, which are properly called Trespasses on the Case, as they are distinguished from Trespasses vi & armis, and therefore are generally laid without those Words, as in the following Precedents.

A Declaration in Trespass on the Case for keeping a Dog accustomed to bite Sheep, &c.

In C. B.
For keeping a
Dog accustomed
to bite
Sheep. Lilly's
Entr. 29.

Northampton, to wit. **J.** P. late of *M.* in the County aforesaid, Gentleman, was attached to answer to *T. K.* of a Plea of Trespass on the Case, &c. and whereupon the said *T.* by *A. B.* his Attorney, complains, That whereas the aforesaid *J. P.* on the 23d Day of *April* in the Year of our Lord 1697, at *M.* aforesaid in the County aforesaid, did knowingly keep and retain a certain Dog accustomed to bite Cattle; which said Dog, afterwards, to wit, on the Day and Year, and at the Place aforesaid,

On Male-feasances.

203

said, being then the Dog of him the said T. did so grievously bite forty of his the said T.'s Sheep then and there found, that thirty Sheep of the Price of thirty Pounds being Parcel of the said forty Sheep of him the said T. died, and the Residue of the same Sheep became much the worse, to the Damage of him T. 40 l. And thereupon he brings his Suit.

Male-feasance.

The like in B. R.

B. F. complains of R. W. being in the Custody of the Marshal, &c. for that, that is to say, whereas he the aforesaid R. did knowingly keep and retain (*such* a Day, Year, and Place) a certain Dog accustomed to bite Sheep; which said Dog, on the Day and Year aforesaid, at H. aforesaid, the Sheep, that is to say, forty Ewes and twenty-five Wethers, of him the said B. did chase and bite, so that by the chasing and biting twenty of the Ewe-Sheep of the Sheep aforesaid, of the Price of 15 l. died, and fifteen of the Wethers aforesaid, of the Price of 10 l. also died: And the Residue of the aforesaid Ewe-Sheep being then great with young, did cast their Lambs; and the Residue of the Wether-Sheep were thereby very much damaged; and he then and there did other Wrongs to the said B. to the Damage of the said B. 50 l. And thereupon he brings this Suit, &c.

In B. R.
Middlesex.

A De-

Male-fen-
sance.

*A Declaration and Pleadings in Trespass on
the Case, for shooting the Plaintiff's Dog.*

In C. B. **Essex, to wit.** **A.** late of Colchester in
For shooting a single Man, was attached to answer to R. B.
Dog. Entr. of a Plea of Trespass on the Case; and
Trin. 3 Geo. whereupon the said R. by T. M. his Attor-
1. Rot. 368. ney complains, That whereas the aforesaid
A. on the first Day of *April* in the Second
Year of the Reign of our Lord the now
King, at Colchester aforesaid in the County
aforesaid, was possessed of a certain Spaniel
Dog of the Price (rather Value of) of *5 l.* as
of the proper Goods of him R. whereby he
the said R. received Benefit and Profit; yet
he the said **A.** being not ignorant of the Pre-
misses, but contriving and maliciously in-
tending very much to hurt and injure the
same R. in this Particular, afterwards, to
wit, on the said first Day of *April* in the se-
cond Year aforesaid, at Colchester aforesaid,
discharged a certain Gun, charged with Gun-
powder and Shot, at and upon the said Spa-
niel Dog of him the said R. whereby the
same Dog was so wounded, that he after-
wards, to wit, on the same first Day of *A-*
pril in the second Year aforesaid, at Colche-
ster aforesaid, died; whereby he the said R.
lost that Benefit and Profit, which he usual-
ly received by the said Dog, and was there-
by very much injured, and hath Damage to
the Value of *10 l.* And thereupon he brings
this Suit.

And

And the aforesaid *A.* by *M. R.* his Attorney, comes and defends the Force and Injury, when, &c. and saith, That the aforesaid *R.* ought not to have his Action thereof against him, because he saith, That long before the aforesaid Time, wherein 'tis above supposed the aforesaid Gun was discharged in and upon the aforesaid Dog, and also at the Time wherein 'tis supposed the aforesaid Gun was so discharged, one *James Smith*, Esq; was seised, and yet is seised in his Demesne as of Fee, of and in the Manor of *B.* with the Appurtenances, in the Parish of *B.* in the County aforesaid, and of and in an ancient Park impaled, situate, and being within the said Manor and Parish of *B.* and also of and in five Acres of Pasture, with the Appurtenances situate and being within the said Manor and Parish of *B.* and contiguous, adjacent, and next adjoining to the said Park: And he the said *A.* further saith, That he the aforesaid *R.* at the said Time, wherein it is above supposed that the said Gun was so discharged in and upon the said Dog, was and yet is incapable and unqualified by the Laws and Statutes of this Kingdom, to keep the Dog in the Declaration aforesaid mentioned; And that the Dog in the Declaration above-mentioned, at the aforesaid Time wherein it is above supposed that the said Gun was discharged in and upon the same Dog, was the proper Dog of him the said *R.* and was then ranging and running about in the said five Acres of Pasture, contiguous, adjacent, and next adjoining to the aforesaid Park, and was doing Damage there: And because the said Dog was then and there so ranging

Male-felance.

A special Plea that the Plaintiff was not qualified, &c.

*Male-fa-
sance.*

Averment.

Traverse.

*A special Re-
plication.*

*De Injuria
sua propria.*

ranging and running about in the aforesaid five Acres of Pasture, contiguous, adjacent, and next adjoining to the said Park, and was doing Damage there, he the said *A.* as the Servant of him the said *James Smith*, and by his Command, did endeavour to seize the said Dog to the proper Use of him the said *James Smith*; And because he the said *A.* could not seize the said Dog, he the said *A.* did then and there, in the aforesaid five Acres of Pasture, discharge the said Gun in and upon the said Dog then so being, and doing Damage in the said five Acres as aforesaid, as was lawful for him to do, which is the same Gun discharged in and upon the same Dog, whereof the aforesaid *R.* doth now above complain; without that, that he the said *A.* discharged the said Gun in and upon the said Dog, at *Colchester* aforesaid, or elsewhere off from the said five Acres of Pasture in *B.* aforesaid: And this he is ready to verify: Whereof he prays Judgment, if the aforesaid *R.* ought to have his said Action thereof against him.

And the aforesaid *R.* saith, That for any Thing in the said Plea before alledged, he the said *R.* ought not to be barred from having his said Action thereof against the said *A.* because by protesting that he knows not any Thing in the same Plea before alledged to be true, for Plea he the said *R.* saith, That he the said *A.* contriving and maliciously intending unjustly to hurt and injure the same *R.* in this Particular, did of his own proper Injury without any such Cause, as by the said *A.* is above alledged, on the said first Day of *April* in the

Male-fa-
lance.

the second Year abovesaid, discharge the said Gun so charged with Gunpowder, Lead, and Shot as aforesaid, in and upon the said Spaniel Dog of the said R. by which the said Dog was so wounded, that afterwards, to wit, on the same first Day of *April* in the second Year aforesaid the said Dog died: And this he is ready to verify: Wherefore and for that he the said *A.* above acknowledges the said discharging the said Gun in and upon the said Dog, as above is declared, he the said R. prays Judgment, and his Damages by Occasion of the Premisses to be adjudged to him in that Particular.

And the aforesaid *A.* saith, That the Plea *Demurreth* of the aforesaid R. above by replying pleaded, *thereto.* and the Matter in the same contained, are not sufficient in Law for him the said R. to have and maintain his said Action against him the said *A.* and that he hath no Need, nor is he bound by the Law of the Land to answer to the said Plea, so by replying pleaded in the Manner and Form aforesaid; wherefore for Default of a sufficient Replication in this Particular, he the said *A.* prays Judgment, and that the aforesaid R. may be barred from having his said Action thereof against him: And for Cause of his Demur- *Causes of De-*
murres. rer in Law in this Particular, he the said *A.* shews, and to the Court here demonstrates these following Causes, to wit, That the said Replication of the said R. doth not confess or avoid, traverse or deny, any particular Matter alledged in the said Plea of him the said *A.* above pleaded in Bar, as it ought to have done; and that the said Traverse by him the said R. above by replying pleaded,

*Wale-fee-
sance.*

is ill, uncertain, too general and insufficient in Law, and puts the whole Matter aforesaid of him the said *A.* in Issue, whereas the said *R.* ought to have traversed, or put in Issue some certain particular Matter by him the said *A.* above pleaded in Bar; And that the same Replication is ill concluded, in that it doth not conclude to the Country, as it ought; and also that the same Replication is multiplex and defective.

Joinder.

The Defendant joins in Demurrer as usual; and upon Monday the 25th of November 1717, Judgment was given for the Plaintiff Nisi Causa on the Wednesday following, and then absolute, as I am informed.

A Declaration in Case, for stopping up Lights.

*In B. R.
For stopping up
of Lights.
Hill. 9 W. 3.
Rol. 362.
See Lilly's
Entr. p. 81.*

Middlesex, to wist. **N**. *R.* complains of *S.* *P.* and *R. A.* being in the Custody of the Marshal, &c. of that, That whereas he the said *N.* on the first Day of *June* in the ninth Year of the Reign of our Sovereign Lord *William* the Third, now King of *England*, &c. was, and continually from that Time hitherto hath been and yet is possessed of and in a Mesuage situate and being in the Parish of *St. Martin in the Fields* in the said County of *Middlesex*, and for the Term of divers Years then and yet to come and unexpired, and of twenty one Windows in and upon the South-Side, and eight Windows in and upon the East Side of the aforesaid Messuage, in and through

through which said Windows the Light, on the said 1st Day of *June* in the ninth Year of the Reign aforesaid, entered and was convey'd, and had used to be convey'd, and then and yet ought to enter and be conveyed for the enlightening the same Mesuage; yet they the said *S. P.* and *R. A.* being not ignorant of the Premises, but maliciously intending and contriving to deprive and hinder him the said *N. R.* from the Use and Benefit of the said several Windows, afterwards, to wit, on the same first Day of *June* in the said ninth Year of the Reign of our said Lord the now King, at the said Parish of *St. Martin in the Fields* in the County aforesaid, did build and erect a certain Edifice near the aforesaid Windows, in the South and East Sides of the aforesaid Mesuage of him the the said *N. R.* and continued the same Erection and Building from that Time until the first Day of *October* then next following, whereby the said Windows in the said Mesuage of the said *N.* were during the Time aforesaid so obstructed and darkened, that he the said *N.* wholly lost and was deprived of the Benefit and Advantage of the said Windows, from the said first Day of *June* until the said first Day of *October* then next following: Wherefore he the said *N.* saith, That he is injured, and hath Damage to the Value of 100*l.* &c.

Male-tenantance.

Note; The better Way is to set forth both the Mesuage, and the Light to have been antient, &c. Salk. 460. 714. 6 Mod. 1 Mod. 116. Prac. Reg. 16, 29.

To this Declaration the Defendant pleaded Not Guilty, and on that Issue the Verdict and Judgment were for the Plaintiff: But Note, it not being said in the Declaration that the Mesuage or the Windows were antient, it was moved in Arrest of Judgment; but by the whole

P

Court

*Male-fea-
lance.*

Court it was held, that it being after a Verdict, it shall be intended, that it was given in Evidence at the Trial, That the House and Windows were antient : And Serjeant Wright and Sir Edward Northy held, that the Declaration would have been good, even upon a Demurrer (sed Q.) Salk.

But it seems this Judgment did not terminate the Dispute; for in Trin. 11 W. 3. there is another Declaration by the same Plaintiff for continuing the stopping of the same Lights, viz.

In B. R. For continuing the stopping up of the Lights supra.

See Lilly 82.

1st Count.

Middlesex, to wit. **N**. R. complains of **S**. **P.** being in the Custody of the Marshal, &c. for that to wit, That whereas he the aforesaid **N.** on the second Day of *October* in the ninth Year of the Reign (*&c. supra to*) possessed of and in a certain ancient Mesuage situate (*&c. supra to*) in and through which said Windows the Light did freely enter, and was convey'd at the Time of erecting, and before the Erection of a certain Edifice hereafter mentioned, and so of Right enter'd, and still ought of Right to enter, for the enlightening the said Mesuage of him the said **N.** Yet he the said **S.** being not ignorant of the Premisses, but maliciously intending (*&c. as before to*) afterwards, on the said 2d Day of *October* in the said ninth Year, &c. and from the same 2d Day of *October* in that Year, until the 20th Day of *October* in the tenth Year of the Reign of our said Lord the now King, at the said Parish of *St. Martin in the Fields* in the County aforesaid, did continue a certain Edifice or Building before that Time, to wit, on the first Day of *June* in the ninth Year

In Case.

211

Male-feas-
lance.

Year abovesaid, erected by him the said S. to the Nufance (Annoyance) of the said Mesuage then and yet of the said N. so near the aforesaid several Windows of him N. that the Lights of the said Windows were thereby obstructed and darkened from the said second Day of *October* in the said ninth Year until the 20th Day of *October* in the tenth Year abovesaid; whereby he the said N. lost and was deprived of the Advantage and Benefit of the same Windows from the said second Day of *October* in the ninth Year aforesaid until the said 20th Day of *October* in the tenth Year aforesaid: And whereas he the aforesaid N. was on the said second Day of *October* in the ninth Year aforesaid, and continually from that Time hitherto hath been possessed, and now is possessed of and in a certain antient Mesuage situate and being (&c. as the first Declaration to) the East Side of the aforesaid antient Mesuage, in and through which said Windows, the Light, before the Erection and Time of erecting of the other Edifice hereunder mentioned, did of Right enter and was convey'd, and still of Right ought to enter and be convey'd, for the enlightening of the said antient Mesuage of the said N. Yet he the said S. being not ignorant of the Premisses, but maliciously intending and contriving to deprive and hinder the said N. from the Use and Benefit of the same several antient Windows last mentioned, afterwards, to wit, on the same second Day of *October* in the said ninth Year of the Reign of our said Lord the now King, and from the same second Day of *October* in that Year until the said 20th Day

2d Count.

Declarations, &c.

*Male-
fance.*

of *October* in the tenth Year of the Reign of our said Lord the now King, at the aforesaid Parish of *St. Martin in the Fields* in the County aforesaid, did continue a certain other Edifice or Building by him the said *S.* before erected, to wit, on the first Day of *June* in the ninth Year abovesaid, to the Annoyance of the aforesaid Mesuage then and yet of him the said *N.* so near the said several last mentioned *antient Windows* of him the said *N.* that the said last mentioned antient Windows became thereby obstructed and darkened; whereby he the said *N.* lost and was deprived of the Use and Benefit of the same Windows, from the aforesaid second Day of *October* in the ninth Year aforesaid until the 20th Day of *October* in the tenth Year abovesaid: Wherefore he the said *N.* saith, That he is injured, and hath Damage to the Value of 40 l. &c.

Note; To the first Count in the above Declaration the Defendant demurred, it not being said the Lights were ancient Lights; and to the second Count pleaded Not Guilty; and Verdict for the Plaintiff. But the Postea was stayed in the Judge's Hands by the Rule infra; yet afterwards the Plaintiff had his Judgment, which was affirmed on a Writ of Error in the Exchequer-Chamber.

N. Rose-

N. Rosewell *against* S. Prior.

Middlesex, to witt. **A**T the Session held at *Westminster* in the Great Hall of Pleas in the County afore-
said, on *Thursday* the 29th Day of *June*
in the 11th Year of the Reign of our
Sovereign Lord *William* the Third now
King of *England*, &c. before Sir *J. Holt*,
Knt. Chief Justice of our said Lord the
King, assigned to hold Pleas before the
King himself,

IT is ordered by the Consent of the Par-
ties, their Counsel and Attorneys, That
the *Postea* shall remain in the Hands of the
said Chief Justice, until the said Chief Ju-
stice shall otherwise order, and that it be re-
ferred to the said Chief Justice for his Judg-
ment to be had thereon, whether the Acti-
on upon which the Issue is joined between the
Parties afore said, be maintainable in Law a-
gainst the said Defendant or not; he the said
Defendant during the whole Time of the
Continuance of the Erection of the Edifice
in the said Action mentioned, not being the
Occupier of that Edifice. And 'tis further
ordered by the Assent afore said, That this
Order be made a Rule of the said Court of
the said Lord the King, before the King
himself, if it shall please the said Court.

Male-fea-
sance.

A Declaration for diverting an antient Water-course, so that the Plaintiff lost the Benefit of his Mill.

In B. R.
For diverting a
Water-course,
&c. See Lil-
ly's Entries
55.

Note,
Corn Mills.

Southampton, to wit. **M**. L. complains of G. S. being in the Custody of the Marshal, &c. For that, to wit, that whereas he the said *M.* was on, &c. seised in his Demesne as of Fee of and in certain Water-Mills, called *S.* Mills, otherwise *K.* Mills, with a Parcel of Moor or Meadow-Land, containing by Estimation three Acres, or thereabout, near adjoining to the said Mills, with the Appurtenances, in *A.* in the County aforesaid; and that the said *M. L.* and all those whose Estate the said *M.* hath in the said Mills, and Parcel of Moor or Meadow Land, have had and ought to have, and from the Time whereof the Memory of Men is not to the contrary, have been accustomed and ought to have the Benefit of a certain Water or Water-course, which issues from a Spring near to, and increases a certain Water-course or Rivulet which runs from another Mill in *A.* aforesaid to the said Mills, called *S.* Mills, otherwise *K.* Mills: But he the said *J. S.* being not ignorant of the Premises, but maliciously contriving and fraudulently intending wholly to deprive the said *M.* of the Profit and Advantage of his said Mills, and of the said Parcel of Moor or Meadow, did on the 11th Day of September in the Year of the Reign of our Lord the now King, at *A.* aforesaid, cut the Bank or Inclosure of the Water or Water-course aforesaid,

aforesaid, which issues from the said neighbouring Spring, and increases the said Water-course or Rivulet, which runs from the said Mill in *A.* aforesaid to the said Mills, called *S.* Mills, otherwise *K.* Mills, and did then and there so far break down and destroy, or cause to be broken down and destroyed the said Bank or Inclosure, and did so divert, and turned, or caused the Water there running to be so turned and diverted, that by reason of the said cutting and breaking down of the said Bank and Inclosure, and turning and diverting of the said Water, the said Mills, called, &c. could not, for want of the said Water so turned and diverted from its said ancient Course, grind or work so well and commodiously as they did before; and also the said Parcel of Moor or Meadow Land was very much over-flowed and drowned, whereby he the said *M.* lost and was deprived of a great Part of the Profits of the said Mill, and of the said Moor or Meadow for a long Time afterwards, *to wit*, from the Day, &c. to the Day, &c. Wherefore he saith, That he is injured, and hath Damage to 100 *l.* &c.

The like against an Attorney of C. B. prosecuted there by Bill.

Norfolk, to wit. **B**E it remembered, that *In C. P.*
on the Day of *The like a-*
in this same Term, Sir *H. B.* Knight, *gainst an A-*
came here into Court by *L. R.* his Attorney, *torney. See*
and exhibited to the Justice of our Sovereign *Hern 133.*
Lord the now King of the Bench here his
P 4 Bill

Male-fear-
sance.

Bill against *E. J.* Gentleman, one of the Attorneys of the Court of our said Lord the now King of the Bench here, present here in Court in his proper Person, in a Plea of Trespas on the Case, the Tenor of which said Bill follows in these Words, *to wit*, To the Justices of our Lord the King of the Bench, *Norfolk, to wit*, Sir *H. B.* Knight, by *L. R.* his Attorney, complains of *E. J.* Gentleman, one of the Attorneys of the Court of our Lord the now King of the Bench, present here in Court in his proper Person, For that he the said *H.* on the 20th Day of *May* in the Year, &c. and long before, and continually afterwards hitherto was, and as yet is seised of one Water-Mill and 10 Acres of Meadow, with the Appurtenances, in *O.* in the County aforesaid, near adjoining to a certain River there: *And also whereas* the Water of that River from the Time whereof the Memory of Man is not to the contrary, by a right and due Course unto the Mill aforesaid was wont to run, the said *E.* maliciously meaning and intending wholly to deprive the said *H.* as well of the Use, Profit and Commodity of his said Mill, as of the foresaid 10 Acres of Meadow, on the said 20th Day of *May* in the sixth Year aforesaid, and continually afterwards, by the Space of one and thirty Days then next following, the ancient Course of the Water of the River aforesaid at *O.* aforesaid, with a certain Sluice there on the East-side of the said River, between the said Mill and the said 10 Acres of Meadow lately erected, did obstruct, by reason of which said Obstruction that Mill aforesaid for Defect of the Water of the said River by the Time

Time aforesaid could not grind, and also the Water of the same River over-whelming the Banks thereof, towards the said 10 Acres of Meadow, wholly over-flowed the same 10 Acres of Meadow, whereby he the said *H.* lost and was deprived of the Profit and Commodity, as well of his said Mill, as of the said 10 Acres of Meadow for a long Time, *to wit*, from the said 20th Day of *May* in the sixth Year aforesaid unto the one and twentieth Day of *June* then next following: Whereby he saith, that he is the worse, and hath Damage to the Value of 40*l.* &c.

*Waste-
sauce.*

*A Declaration against two Defendants,
for stopping of a Way to the Plaintiff's
Close.*

Northampton, to wit. *J.* A. the Elder, late *In C. B.*
of *L.* in the Coun- *For stopping a*
ty aforesaid, Yeoman, and *J. L.* the Young- *Way to a Close,*
er, late of *L.* aforesaid, Yeoman, were at- *&c. See Lil-*
tached to answer to *W. L.* Gentleman, of *ly 72.*
a Plea of Trespass on the Case, and where- *2 Salk. 728.*
upon he the said *W.* by *J. U.* his Attorney
complains, That whereas the foresaid *W.* on
the first Day of *May* in the sixth Year of
the Reign of our Sovereign Lord *George* the
Second, now King of *Great Britain*, &c. was
seised in his Demesne as of Fee of and in one
Close of Pasture, called the *C. in L.* aforesaid
in the said County of *N.* and that he the said
W. on the said first Day of *May*, and conti-
nually afterwards, until, &c. *had and ought to*
have, for himself and his Servants at all Times
in the Year at his Will and Pleasure, a cer-
tain Way as well on Foot as on Horse-back,
in,

*Male-fa-
cance.*

in, over, through and beyond a certain Close, called the *B.* in *L.* aforesaid, from a certain Highway in *L.* aforesaid, called *L. Street*, to the Close of him the said *W.* there called the *C.* aforesaid, and so backward in, through and over the said Close, called the *B.* for driving and passing the Cattle of him the said *W.* and to carry and re-carry with his Carts and Carriages, as belonging and appertaining to his said Close; yet they the aforesaid *J.* and *J.* contriving and intending unjustly to injure the said *W.* and to hinder and deprive him of his said Way, on the said first Day of *May* in the said sixth Year, at *L.* aforesaid in the said County of *L.* did digg, erect, make and continue a certain Ditch and Hedge cross the said Way of the said *W.* in the Close aforesaid, called the *B.* leading to the Close of the said *W.* called the *C.* and also did so far obstruct and stop the said Way, that he the said *W.* was wholly deprived and hindered from the Use of the said Way for a long Time, *to wit*, from the said first Day of *May* in the sixth Year until the 21st Day of *May* in the Seventh Year, &c. To the Damage of him the said *W.* 20 l. &c.

*A Declaration in Case, for enticing and
eloigning away the Plaintiff's Servant.*

*In B. R.
For enticing
and eloigning
his Servant.
Lilly's Entr.
72.*

Middlesex, to wit. J. S. of, &c. complains
J. of *T. G.* being in the
Custody of the Marshal of the *Marshalsea* of
our Lord the King, before the King himself,
For that, *to wit*, That whereas one *A. B.* on,
&c. at, &c. being duly and lawfully retained
in

in the Service of him the said *J. S.* to serve him the said *J. S.* as a Footman, or as a menial Servant, &c. for the Term or Space of one whole Year then next following, fully to be complete and ended; and he the said *A. B.* having served the said *J. S.* in the said Capacity of a Footman, &c. for the Space of six Months from and after the said first Day of *May* in the Year aforesaid, whereby he the said *J. S.* had and received great Profit, or very considerable Benefit and Advantage in his Affairs by Means of the Service of the said *A.* yet he the said *T. G.* being not ignorant of the Premises, but contriving and fraudulently intending to deprive him the said *J. S.* of the Service of his said Servant, and of all the Advantages, Gain and Benefit which he the said *J. S.* had or should have or gain by reason of the Service of his said Servant, did craftily and subtilly persuade and procure the said *A. B.* being so retained a menial Servant by the said *J. S.* as aforesaid, to eloin and absent himself from, and wholly to leave the said Service of him the said *J. S.* against the Will of the said *J. S.* whereby he the said *J. S.* did wholly lose, and was deprived of the Service of the said *A. B.* for a long Time, *to wit*, for the Space of six Months, *to wit*, from, &c. until, &c. To the Damage of him the said *J. S.* 20 *l.* And thereupon he brings this Suit, &c.

A De-

*Stall-fee-
ance.*

*A Declaration for hindring the Plaintiffs
in receiuing the Tolls, &c. of their
Market.*

*In B.R.
For hindring
one in the Profit
of his Market.
Lilly 63.*

Gloucester, to wit. **T.** S. Esq; and R. B. Esq; complain of **J. W. S. B.** and **J. B.** being in the Custody of the Marshal, &c. For that, *to wit*, That whereas they the said **T.** and **R.** on the 29th Day of *October* in the first Year of the Reign of our Sovereign Lord *George* the Second, now King, &c. and continually afterwards, until the Day of the exhibiting of this Bill, *to wit*, on the 20th Day of *April* in the third Year of the Reign of our said Lord the now King, were, and yet are seised, as of Fee and of Right, of and in a certain Market held and kept, and to be held and kept in every Week upon *Thursday* in and at, &c. in the County aforesaid, for divers Merchandizes, Wares, Goods and Chattels to be there bought and sold; and also, among other Things, of and in the Liberry and Franchise of having and keeping the public Beam, Ballances and Weights, and of publickly using the same there; by reason of which said Market and Franchises, they the said **T.** and **R.** for and during the Time aforesaid, were lawfully intitled to have and receive, as belonging to the same Market, the divers Tolls of Stallage, Piccage, Wayage, Pitching-pence, and other Profits of the several Persons coming to the said Market, and there buying and selling the said Merchandizes, &c. yet they the said **J. W. S. B.** and **J. B.** being not ignorant of the Premises,

misses, but maliciously intending and contriving to grieve and injure them the said T. S. and R. B. in the said Premisses, and also wholly to exclude and deprive them of and from the Franchises and Profits of their said Market, and particularly of and from the Profit of taking and receiving of the said Pitching-pence, and other Profits of the said publick Beam, Ballances and Weights in the same Market, they the said J. W. S. B. and J. B. on the aforesaid 9th Day of *October* in the said third Year of the Reign of our said Lord the now King, and at divers other Days and Times in and during the Time of the said Market, between the 9th Day of *October* in the said first Year of the Reign of our said Lord the now King and the said Time of the exhibiting of this Bill, did at C. aforesaid, of their own proper Injury, without any lawful or legal Authority, maliciously and unjustly enter into the Market aforesaid, and then and there unjustly collected and received, and converted or caused to be collected and received, and converted to their own proper Use, the said Toll, called Pitching-pence, and the said Profits of the Beam, Ballances and Weights; whereby they the said T. S. and R. for and during the whole Time aforesaid, lost and were deprived of the aforesaid Toll, called Pitching-Pence, and of the said Profits of the Beam, &c. To the Damage of them the said T. S. and R. B. 200 l. &c.

Note ; Herein on the Issue Not guilty at a Trial at Bar, the Plaintiffs had a Verdict, and Judgment thereupon.

Male-fea-
zance.

*A Declaration for erecting a new Fair to
the Prejudice of the Plaintiff's Fair
by Prescription.*

In C. B.
For erecting a
Fair to the
Prejudice of
the Plaintiff's
Fair. See
Lilly 30.

Southampton, to w^{it}. J. P. late of L. in
the County afore-
said, Yeoman, and N. E. late of, &c. were
attached to answer to J. T. Esq; and J. S.
Gent. of a Plea of Trespass upon the Case,
and whereupon they the said J. T. and J. S. by
J. C. their Attorney complain, that whereas the
Dean and Chapter of the Cathedral Church
of the Holy Trinity, at Winchester in the
County afore said, were lately seised of and
in a certain Close of Pasture, called the S.
with the Appurtenances, in the Parish of S.
and County afore said, on the North Side of
the King's Highway there, and lying next
and contiguous to the same Way, in their De-
mesne as of Fee in Right of their said Church:
And whereas one S. T. Gent. was also lately
seised of another Close of Meadow or Pasture,
with the Appurtenances, called C. Close, on the
South Side of the said King's Highway, and
lying next and contiguous to the same, in his
Demesne as of Fee, and they the said Dean
and Chapter, and the said S. T. and all those
whose Estate they respectively have in the
said Closes, with the Appurtenances, from
the Time whereof the Memory of Man is not
to the contrary, have had and held, and been
used and accustomed to have and hold in and
upon the same their said Closes yearly, and
every Year, on every sixth Day of November,
if it was not Sunday, and if it was, then on
the

In Case.

223

Male-fea-
sance.

the Morrow of the same *Sunday*, a certain Fair for the buying and selling of divers kinds of Goods, Wares and Merchandizes (or of divers kinds of Cattle, *to wit*, Horses, Oxen, &c.) or as it is there (for Sheep) to be there bought and sold, together with the Tolls of Stallage of the Sheep-penns and of Piccage there, and all other the Profits, Commodities and Emoluments whatsoever to the same Fair incident, belonging or appertaining, *to wit*, the Toll, Stallage and Piccage, and the Profits of the same severally and respectively, for such Sheep as were sold or exposed to Sale in or upon their said several Closes respectively : And also whereas he the said *J. T.* now is, and for divers Years now last past hath been lawfully possessed of the said Close of the aforesaid Dean and Chapter, and of their Share of the aforesaid Fair, with its Appurtenances, as their Farmer or Under-tenant thereof, for a Term of Years not yet past : And whereas the said *J. S.* now is, and for divers Years now last past hath also been lawfully possessed of the said other Close of the aforesaid *S. T.* and of his Share of the said Fair, with the Appurtenances, in like Manner as his Farmer and Under-tenant of the same ; and that therefore they the said *J. T.* and *J. S.* for and during that whole Time aforesaid, have had and received, and ought to have and receive the whole Profit of the same Fair between them respectively as aforesaid, yet they the said *J. P. N. E. &c.* well enough knowing the Premises, but contriving and fraudulently intending unjustly to grieve and injure them the said *J. T.* and *J. S.* and to hinder and deprive them of and in the Toll and

Declarations, &c.

and Profits of the same Fair, have lately, and some few Days before the said Fair was and ought to be held in and upon the said Close in Manner as aforesaid, raised and erected without any legal Warrant or Authority whatsoever, a certain new and other Fair to be held yearly for Sheep, at the Parish of *H.* in the County aforesaid, near the said Close where the said Fair of them the said *J. T.* and *J. S.* had been, and used of Right to be held as aforesaid; and have unlawfully and injuriously kept and held the same new Fair, *to wit, (Shewing the Time and Place)* and then and there have taken, had and received divers and considerable Sums of Money for Tolls, Stallage, &c. to the Hurt and Prejudice and great Annoyance of the said ancient Fair of them the said *J. T.* and *J. S.* whereby they the said *J. T.* and *J. S.* have lost and been deprived of their said rightful Profits of Toll, Stallage, Piccage, and other Emoluments, which of Right they would otherwise have taken and received from their said ancient Fair; To the Damage of them the said *J. T.* and *J. S.* 20 *l.* And thereupon they bring their Suit, &c.

*The Entry of a Declaration, Plea,
&c. in Case, for stopping a Way
to a Colliery.*

*Pleas before our Lord the King at West-
minster, of Hilary Term in the ninth
Year of the Reign of our Sovereign Lord
William the Third, now King of Eng-
land, &c. Roll 437.*

Pork, to wit. **B**E it remembered, that here-
tofore, that is to say, in
the Term of St. Hilary last past, before our
Lord the King at *Westminster* came *H. J.* by
E. B. his Attorney, and brought into the Court
of our said Lord the King then there, his cer-
tain Bill against *J. M. Esq;* and *R.* his Wife,
S. W. J. L. &c. being in the Custody of the
Marshal, &c. of a Plea of Trespas on the
Case; and there are Pledges of the Prose-
cution, to wit, *John Doe* and *Richard Roe*;
which said Bill follows in these Words, to wit,
H. J. complains of *J. M.* and *R.* his Wife,
S. W. J. L. being in the Custody of the Mar-
shal of the *Marshalsea* of our Lord the King,
before the King himself; for that, to wit,
That whereas he the said *H. J.* was on the
14th Day of *May* in the said ninth Year of
the Reign of our Sovereign Lord *William* the
Third, now King of *England*, &c. and long
before, and always afterwards hitherto, hath
been

In B. R.

*For stopping a
Way to a Col-
liery. Hill.
9 W. 3. Rot.
437. See Salk.
15. &c. 728.
Setting forth,
that he was
possessed of a
Term in a Co.
liery adjoining
to a Highway.*

Wale-
fance.

And had a
great Quanti-
ty of Coals
ready for Sale.

been possessed, and still is possessed for a certain Term of Years, then and yet to come and unexpired, of and in a certain Colliery and Mine of Coals, being under the Soil and Earth (and in the Bowels) of a certain Close or Parcel of Land, situate and lying in the Parish of *W.* otherwise *Wh.* in the County aforesaid, called *W. Fields*, otherwise *Wh. Fields*, and near adjoining to a common King's Highway, in the Parish aforesaid, leading on the North Part from the Town of *Wetherby* in the County aforesaid, in, thro' and beyond a certain Moor there, called *Wip-Moor*, and from thence in, thro' and beyond a certain Street or Lane there, called *Anlisshaw-Lane*, and from thence in, thro' and beyond the said Town of *W.* otherwise *Wh.* and the like backward; And also of and in a certain other Colliery and Mine of Coals (*Quære the Term*) being under the Soil and Earth, and in the Bowels of a certain Close of Moor, or Parcel of Land, in the Parish aforesaid, called *Hakon-Moor*, situate and lying, and in like Manner near adjoining to the King's common Highway aforesaid, leading on the North Part from the Town of *Wetherby* aforesaid, in, thro' and beyond the said Moor, called *Win-Moor*, and from thence, in, thro' and beyond the said Street or Lane, called *Anlisshaw-Lane*, and from thence, in, thro' and beyond the Town of *H.* in the County aforesaid; and in like Manner backwards, in, thro' and beyond (or on this Side) the said Town and Street, or Lane aforesaid, in, thro' and beyond which said Street or Lane, called *A. Lane*, the Coals dug in, and got out of the Mines aforesaid, were used and accustomed to have been carried, conveyed, to the

Male-fea-
sance.

the neighbouring and circumjacent Places and Houses upon all Occasions : And also where- as on the same 14th Day of May, &c. he the said H. J. had a great Quantity, *to wit*, 200 Chaldron of Coals, dug and raised out of the Mines aforesaid, lying in the several Closes aforesaid, ready for and exposed to Sale, they the said J. R. S. J. &c. being not ignorant of the Premisses, but contriving and fraudulently intending to hinder, deprive and defraud the said H. J. of and from the Use and Benefit, of his said Colliery, and to seduce and withdraw the Buyers of Coals from buying or having the Coals of the said H. so ready for Sale as aforesaid; And to draw and engross the said Buyers to the Colliery of the said J. M. near adjoining, in the Parish aforesaid, did afterwards, *to wit*, on the said 14th Day of May in the said ninth Year of the Reign of the said Lord the now King, put and place in the Way aforesaid, in the Lane aforesaid, in the Parish aforesaid, four Cart-loads of great Stones, and one large Root of a great Ashen Tree, and permitted and continued, or caused the same Stones and Root there to lie and continue for the Space of one whole Month, by which said Stones and Root, the aforesaid Way, in, thro' and beyond the Street aforesaid, was so far stopped and obstructed, that the Carts and Carriages necessary for the carrying and conveying away of the said Coals, so dug and taken out of the said Mines of the said J. H. as aforesaid, could not pass or have any Way for passing in, thro' and beyond the said Street, called *An-lishaw-Lane*, as aforesaid; whereby he the said H. J. wholly lost and was deprived of the Benefit, Commodity, Profit and Advantage

But the De-
fendant to hin-
der the Buyers,
stopped up the
Way, &c.
whereby he
lost the Sale,
&c.

Waste-fea-
sance.

of selling his said Coals, so dug in and drawn out of his said Colliery, for and during the whole Time aforesaid; and the said *H. J.* for Want of the Buyers so hindred and obstructed by the Causes aforesaid, became thereby greatly damnified and prejudiced, and received Loss to the Damage of him the said *H. 50l.* And thereupon he brings this Suit, &c.

Imbarlance.

And now at this Day, to wit, *Monday* next after the Octave of *St. Hilary* in this same Term, until which Day the said *J. M.* and *R.* his Wife, *S. J. H. S. &c. &c.* had Leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster* came as well the said *H. J.* by his Attorney aforesaid, as the said *J. M.* and *R.* his Wife, *S. J. H. S.* by *M. J.* their Attorney: And they the said *J. M. R. S. J. H. S. &c.* defend the Force and Injury, when, &c. and say, that they are not guilty of the Premisses above laid to their Charge in Manner and Form as the said *H. J.* doth above complain against them: And of this they put themselves on the Country; and the said *H. J.* in like Manner, &c. Therefore let a Jury come thereupon before our Lord the King at *Westminster*, on *Saturday* next after the Octave of the Purification of the blessed Virgin *Mary*, and who are neither related to the Plaintiff or Defendants, to take Knowledge of the Matters in Issue between the said Parties, because as well the Plaintiff as the Defendants, between whom the Matter in Variance is, have put themselves upon that Jury. The same Day is given to the Parties aforesaid at the same Place.

Not Guilty
pleaded.

Issue joined,
and Venire
awarded.

In Case.

229

See the Case upon this Record in 1 Salk. 15, 16, 17. where it appears, That though a Verdict was for the Plaintiff, yet on a Motion in Arrest of Judgment, a Rule was made, That Judgment should be stay'd quousque, &c. And the Court being afterwards equally divided, the Plaintiff could not have Judgment, because no Rule could be made to discharge the former Rule; Quære. And from the Argument in that Case, it seems the Court was divided on this Point, viz. whether it was sufficient for the Declaration supra, to alledge only in general that Buyers or Customers could not come, or whether it ought not to set forth especially that Customers were coming and were hinder'd. But suppose the Knowledge of the Obstruction was so general that none attempted to come; I take it the Action lies without such Allegation in the Declaration.

Male-feasance.

Note.

A Declaration in Case for throwing down the Plaintiff's Inclosure, whereby the Cattle of others got into his Close, &c.

Wiltshire, to wit. SIR Anthony Ashley Cooper, Bart. complains of Nicholas St. John, Esq; being in the Custody of the Marshal, &c. for that to wit, That whereas he the aforesaid Sir A. on the third Day of August in the 18th Year of the Reign of our Sovereign Lord Charles the Second, now King of England, &c. was and yet is seised of and in one Close of Pasture, containing 124 Acres, and of one other Close of Pasture, containing 80 Acres, lying within, and included in the Close aforesaid, both

In B. R. For throwing down Inclosures, whereby, &c. Lilly 64.

Declarations, &c.

*Male-ten-
ance.*

The Seisin.

The Buttals.

*The Grava-
men.*

which Closes are known by the Name of *The Purliews*, otherwise *Ruffels Woods* lying in *Liddiard Milicent* in the County aforesaid, in his Demefne as of Fee, which said several Closes were on the said third Day of *August* in the 18th Year aforesaid, and had been for divers Years then last past well and sufficiently hedged and ditched, and otherwise inclosed by him the said Sir *A. A. C.* for the Preservation of the Grasing and Feeding in the same Closes respectively growing: And whereas the aforesaid Close of Pasture, containing 124 Acres, is now and hath been, from the Time whereof the Memory of Man is not to the contrary, next adjoining to a certain common Field, called *P. Common*, on the North East, and North and North-West, and to another common Field called *Webb's Purliu*, on the South-West, which said inclosed Fields lie together no way separated, or divided between themselves, by any Hedges or Fences: And whereas the Grass yearly growing in the said two inclosed Closes hath for the Space of 16 Years now last past been lett at a reasonable Price of the yearly Value of 60 *l.* of lawful Money of *England*; yet he the said *N.* being not ignorant of the Premisses, but contriving and maliciously intending totally to deprive the said Sir *A.* of and from all Commodity, Benefit and Profit of the said Closes, did on the said third Day of *August* in the 18th Year aforesaid, at *Liddiard M.* aforesaid, break and throw down the said Hedges of the said Sir *A.* to wit, ten Perches of the Hedges inclosing the aforesaid Close, containing 80 Acres of the said Sir *A.*'s Land, as aforesaid; and kept and continued the

the said Hedges so broken and thrown down from the said third Day of *August* in the 18th Year aforesaid, until the 23d Day of *October* in the same 23d Year, by making at several Days and Times, during the said Space of Time, divers Ruptures and Breaches in the Hedges and Fences, of as well the said Close, containing 80 Acres, as of the said Close, containing 124 Acres. By Reason whereof divers Beasts and Cattle, to wit, Horses, Oxen, Cows, Sheep, Heifers, Calves, (&c.) of Persons unknown at that Time, going and depasturing in the common Fields aforesaid, did on the said third Day of *August* in the 18th Year aforesaid, and at divers other Days and Times between the same third Day of *August* and the aforesaid 23d Day of *October* in the 23d Year aforesaid, enter into the several Closes of the said Sir *A.* aforesaid, and tread down, waste and spoil, eat up and consume the Grass and Herb of the said Sir *A.* then and there growing, amounting in the whole to the Value of 300*l.* whereby he the said Sir *A.* lost and was deprived of the whole Commodity and Profit of the said Closes, for and during the whole Time aforesaid, to the Damage of him the said Sir *A.* of 300*l.* And thereupon he brings this Suit, &c.

But Note; the above Declaration may be laid by Way of Trespass, which see hereafter.

Male-fes-
sance.

*A Declaration in Case, for eating the
Common with Conies.*

In B. R.
For eating the
Common with
Conies.
Lilly 62.

Work, to wit. J. S. complains of E. F. Esq;
being in the Custody of
the Marshal, &c. for that, to wit, That
whereas he the said J. had been continually
for the Space of four Years now last past, and
yet is seised of a Mesuage and fifty Acres of
Land, with the Appurtenances lying in C.
in the said County of T. in his Demesne as
of Fee; And the said J. and all those whose
Estate he hath of and in the said Tenements,
from the Time whereof the Memory of Man
is not to the contrary, have had and been
accustomed to have Common of Pasture in
a certain great Pasture in C. in the County
aforesaid, called C. Barnsdale, for all their
commonable Cattle levant and couchant ly-
ing down and up-rising in and upon the a-
foresaid Mesuage and 50 Acres of Land, in
every Year, at all Times of the Year, as be-
longing and appertaining to the said Mesu-
age, and 50 Acres of Land with their Appur-
tenances: Yet he the said E. F. being not
ignorant of the Premisses, but contriving and
unjustly intending to hinder the said J. of
his said Common of Pasture, in the said Pa-
sture call'd C. Barnsdale aforesaid, and whol-
ly to deprive him of the Profit and Benefit
of the same, did on the first Day of *Decem-
ber* in the sixth Year of the Reign of our
Lord the now King, and continually after-
wards hitherto, keep and feed so many Co-
nies, to wit, 10000 Conies in and upon the
said

said Pasture call'd *C. Barnsdale*, that by Reason thereof the greatest Part of the Grass and Herbage there was by the said Conies eaten up and consumed; whereby the said *J.* during the whole Time aforesaid, could not have, take and receive his said Common of Pasture for his Cattle then levant and couchant, up-rising and down-lying in the said Pasture called *C. Barnsdale*, in so ample and beneficial a Manner, as he before that Time had and used to have; whereof he the said *J.* saith, That he is injured, and hath Damage to the Value of 50*l.* And thereupon he brings this Suit, &c.

A Declaration in Case by a Remainder-Man, against a Copyhold for Life, for committing Waste.

Now, to wit. **W** *J.* late of *S.* in the County aforesaid, Yeoman, was attached to answer to *S. J.* of a Plea of Trespass on the Case; and whereupon the said *S.* by *J. R.* his Attorney, complains, That whereas one *W. C.* now deceased, was in his Life-time, to wit, on the third Day of *January* in — Year, &c. at *S.* in the same County, seised of and in one Mesuage, with the Appurtenances situate and being in *S.* aforesaid, held of the Manor of *S.* in the same County, by Copy of Court-Roll of the same Manor in his Demesne as of Fee, at the Will of the Lord, according to the Custom of that Manor: And being so seised he the said *W. C.* afterwards, to wit, on the same 30th Day of *January* in the Year aforesaid, out of the Court

In C. B.
By a Remain-
der-Man a-
gainst Tenant
for Life doing
Waste.

See 3 Lev.
128. Hern
161.

*Quit-ten-
ance.*

*Copyhold sur-
render'd at a
Court-Baron,
&c.*

*To the Use of
J. for Life,
Remainder to
S. in Fee, and
Admission
thereon.*

Court of the said Manor, according to the Custom of the same Manor, surrender'd into the Hands of the Lord of the same Manor, by the Hands and Acceptance of certain Persons, to wit, *T. K.* and *J. A.* two customary Tenants of the said Manor, the aforesaid Mesuage, with the Appurtenances by the Name of the *Grass-Place*, built adjoining on the East Side (*&c. as it is bounded or described*) in *S.* aforesaid, to the Use of *Jane* his then Wife, for the Term of the Life of her *Jane*, and after her Death, to the Use of the said *S. J.* his Heirs and Assigns: And he the said *W. C.* being seised of the said Mesuage with the Appurtenances in the Form aforesaid, afterwards, to wit, on, *&c.* at, *&c.* died seised of the said Estate, in the said Manor and Appurtenances, after whose Death, to wit, at a Court-Baron *W. W.* Esq; being then the Lord of the said Manor of *S.* held in and for the said Manor at *S.* aforesaid, on the fifth Day of *April* in the said Year of our Lord 1730, before *R. B.* Gentleman, then Steward of the same Court, the Surrender so made by the said *W. C.* in his Life, as aforesaid, was duly presented and inrolled: And the said *Jane* was then and there rightly and lawfully admitted Tenant (among other Things) to the said Mesuage with the Appurtenances, for the Term of the Life of the said *Jane*, with the Remainder thereof, to the said *S.* his Heirs and Assigns in the Form aforesaid; by Virtue of which said Surrender and Admission she the said *Jane* enter'd into the said Mesuage with the Appurtenances, and was thereof seised in her Demesne as of *Freehold* (*&c.*) for the Term of the Life

Waste-
fence.

Tenant for
Life marries,
and the Hus-
band commits
Waste in pul-
ling down a
Barn, &c. to
his Damage
100l.

Life of the said *Jane*, at the Will of the Lord, according to the Custom of the said Manor, the Remainder thereof belonging to the said *S.* his Heirs and Assigns as aforesaid: And she the said *Jane* being so thereof seised, afterwards, to wit, on, &c. at *S.* aforesaid, did take to her Husband the said *W. J.* whereby they the said *W.* and *Jane* were seised of the Mesuage aforesaid, with the Appurtenances, in their Demesne as of Freehold (2.) in Right of the said *Jane*, for the Term of the Life of the said *Jane*, at the Will of the Lord, according to the Custom of the said Manor: And he the said *W. J.* with *Jane* his said Wife (or in Right of the said *Jane*) being so seised thereof for the Life of the said *Jane*, though the Remainder of and in the said Mesuage and Appurtenances belonged to the said *S.* his Heirs and Assigns, as aforesaid: Yet he the said *W. J.* being not ignorant of the Premisses, but contriving and fraudulently intending to disinherit, and wholly to deprive him of the Mesuage and Appurtenances aforesaid, and also greatly to diminish and depreciate the Estate and Interest, which the said *S.* had (in Remainder) of and in the said Mesuage and Appurtenances, on the first Day of *February* in the fourth Year of the Reign of our Lord the now King, at *S.* aforesaid, did with * Force * and Arms pull down and demolish a certain Barn, Parcel of the same Mesuage of the Value of 50*l.* and then and there took and carried away, and sold the Timber, Stones and Tiles, and other Materials of the same Barn, and converted and disposed to his own Use the Monies arising therefrom; whereby he

*Note; This
seems Trespass.

the

*Spole-
fance.*

the said *S.* became, and is not only very much hurt and prejudiced in his said Estate and Interest of and in the said Mesuage and Appurtenances; but also he the said *S.* is wholly disinherited and deprived of the said Barn and its Appendances, being Parcel of the Mesuage (and Appurtenances) aforesaid, to the Damage of him the said *S.* 100 l. &c.

See the Demurrer hereto, and Argument thereon, 3 Lev. 130, 131.

*Declaration
in Case by him
in Reversion
for digging a
Trench, &c.*

Esser, to wit. **R.** *W.* of, &c. was attached to answer to *T. N.* of a Plea of Trespass upon the Case, &c. And whereupon the said *T.* by *J. B.* his Attorney complains, That whereas he the said *T.* before the Time of committing the Waste, Spoil and Destruction, hereafter first mentioned, to wit, on the Feast of the Birth of our Lord 1732, was seised in his Demesne as of Fee of and in an Orchard in *M.* aforesaid, and being so seised thereof the said *T.* on the same Feast at *M.* aforesaid, demised the said Orchard to *J. Monk*, To have and to hold to him from that Feast for one Year from thenceforth next following, and fully to be complete and ended, and from the End of that Year from Year to Year at the Will of the said *T.* and *J. Monk*, by Virtue of which Demise the said *J. Monk* entered into the said Orchard, and from the said Feast hitherto was, and still is possessed thereof, the Reversion thereof belonging to the said *J. N.* Nevertheless the said *R.* well knowing the Premisses whilst the said *J. Monk* was so possessed of the said Orchard by Virtue of the said Demise, the

the Reversion thereof belonging to the said *T. P. &c.* to wit, on the 6th Day of *May* in the Year of our Lord 1734, committed Waste, Spoil and Destruction in the said Orchard, by digging the Soil thereof, and making a deep Trench and Ditch therein to the great Damage and Disherison of the said *T.* And whereas he the said *T.* before the Time of committing the Waste, Spoil and Destruction hereafter first mentioned, to wit, on the said Feast of the Birth of our Lord in the said Year of our Lord 1732, was seised in his Demesne as of Fee of and in a Close of Pasture, called a Croft, in *M.* aforesaid; and being so seised thereof he the said *T.* on that Feast at *M.* aforesaid, demised to the said *J. M.* the said Close of Pasture; To have and to hold to him from that Feast for one Year from thenceforth next following, and fully to be complete and ended, and from the End of that Year, from Year to Year, at the Will of the said *T.* and *J. Monk*, by Virtue of which Demise the said *J. Monk* entered into the said Close of Pasture, and from the said Feast hitherto was, and still is possessed thereof, the Reversion thereof belonging to the said *T.* Nevertheless the said *R.* well knowing the Premises whilst the said *J. Monk* was possessed of the said Close of Pasture by Virtue of the said Demise as aforesaid, the Reversion thereof belonging to the said *T.* to wit, on the said sixth Day of *May* in the said Year of our Lord 1734, committed Waste, Spoil and Destruction in the said Close of Pasture, by digging up the Soil thereof, and making a deep Trench and Ditch therein, to the great Damage and Disherison of the said *T.*

*Spate. 1732.
Sance.*

T. And whereas he the said *T.* before the Time of committing the Waste, Spoil and Destruction hereafter first mentioned, to wit, on the said Feast of the Birth of our Lord in the Year of our Lord 1732 aforesaid, was seised in his Demesne as of Fee of another Orchard in *M.* aforesaid; and being so seised thereof he the said *T.* on that Feast at *M.* aforesaid, demised that Orchard to the said *J. M.* To have and to hold from that Feast at the Will of the said *T.* and *J. Monk*; by Virtue of which Demise the said *J. Monk* on the Morrow of that Feast entered into the said last mentioned Orchard, and from thenceforth hitherto has been, and still is possessed thereof, the Right, Interest and Estate of him the said *T.* still continuing therein: Nevertheless the said *R.* well knowing the Premisses, whilst the said *J. Monk* was so possessed of the said last mentioned Orchard, by Virtue of the said Demise as aforesaid, (the Right, Interest and Estate of the said *T.* continuing therein) to wit, on the said 6th Day of *May* in the said Year of our Lord 1734, committed Waste, Spoil and Destruction in the said last mentioned Orchard, by digging up the Soil thereof, and making a deep Trench and Ditch therein to the great Damage and Diminution of the Inheritance of the said *T.* therein: And whereas he the said *T.* before the committing the Waste, Spoil and Destruction hereafter first mentioned, to wit, on the said Feast of the Birth of our Lord in the Year of our Lord 1732 aforesaid, was seised in his Demesne as of Fee of another Close of Pasture in *M.* aforesaid; and being so seised thereof he the said

said T. before the committing of the Waste, Spoil and Destruction first hereafter mentioned, to wit, on the said Feast of the Birth of our Lord in the Year of our Lord 1732 aforesaid, at M. aforesaid, demised that Close of Pasture to the said J. M. To have and to hold to the said J. M. from that Feast, at the Will of the said T. and J. M. by Virtue of which Demise the said J. M. on the Morrow of that Feast entered into the said last mentioned Close of Pasture, and from thenceforth hitherto was, and still is possessed thereof, the Right, Interest and Estate of the said T. still continuing therein: Nevertheless the said R. well knowing the Premisses, whilst the said J. M. was so possessed of the said last mentioned Close of Pasture as aforesaid by Virtue of the said Demise thereof so made to him by the said T. as aforesaid, the Right, Interest, and Estate of the said T. continuing therein, to wit, on the said 6th Day of May in the said Year of our Lord 1734, committed voluntary Waste, Spoil and Destruction in the said last mentioned Close of Pasture, by digging up the Soil thereof, and making a deep Trench and Ditch therein, to the great Damage and Diminution of the said T. in that Close of Pasture: And whereas the said J. Monk at the Time of the committing of the Waste, Spoil and Destruction hereafter first mentioned, was Tenant in Possession of another Orchard, and another Close of Pasture in M. aforesaid, by Virtue of a Demise by him the said T. thereof made to him the said J. M. the Reversion of which last mentioned Orchard and Close of Pasture, expectant on the said Demise, belonged to the

Declarations, &c.

240

the said T. and his Heirs: Nevertheless the said R. well knowing the Premises, on the said 6th Day of May in the Year of our Lord 1734 aforesaid committed voluntary Waste, Spoil and Destruction in the last mentioned Orchard and Close of Pasture, by digging up the Soil in the said last mentioned Orchard and Close of Pasture respectively, by making a deep Trench and Ditch in each of the said last mentioned Orchard and Close of Pasture, to the great Damage and Dishonour of the said T. in his Reversion therein: And whereas the said J. M. was Tenant at Will to the said T. of another his Orchard, and another his Close of Pasture in M. aforesaid, the said R. whilst the said J. M. was so Tenant thereof as aforesaid, to wit, on the said 6th Day of May in the Year of our Lord 1734 aforesaid, voluntarily and injuriously dug up the Soil of the said last mentioned Orchard and Close of Pasture, and made in each of them a deep Trench and Ditch to the great Diminution of the Value thereof, to the Damage of the said T. of Forty Pounds: And thereupon he brings Suit, &c.

A Declaration on a Warranty of Wines to be good, which proved to be corrupt, &c.

In B. R. *On a Warranty of Wines to be good.* *See Hern 224, &c.* **Middlesex, to wit.** **A.** B. complains of C. D. being in the Custody of the Marshal, &c. to wit, Whereas he the said C. D. on, &c. at, &c. in the said County of M. in Consideration of 16 l. of good and lawful Money of Great Britain, by the aforesaid

aforesaid *A.* to the said *C.* then and there in *Warranty.*
 Hand paid, did bargain and sell unto him the
 said *A.* one Tun of Wines; and upon making of the said Bargain and Sale, he the said
C. did then and there warrant the same Wines
 to be good and perfect Wines, and in good
 Condition: Yet he the said *A.* in Fact saith,
 That the same Wines were at the Time of
 the said Bargain and Sale, corrupted and adul-
 terated Wines, and if drank, hurtful to Man's
 Body; whereby he the said *A.* upon the said
 Bargain and Sale, and Warranty, was then
 and there very much deceived and defrauded,
 to the Damage of the said *A.* 10 l. &c.

*A Declaration on warranting a Horse to
 be the Seller's own, when it was ano-
 ther Man's.*

Surrey, to wit. *C.* D. late of *J.* in the *In C. B.*
County aforesaid, Yeoman, was attached to answer to *A. B.* of a *On Warranty*
 Plea, That whereas he the said *A.* had on, *of a Horse to*
 &c. at, &c. in the County aforesaid, bargained, *be his own,*
 ed and agreed with him the said *C.* for and *See Hern 224.*
 concerning a certain Horse then and there *&c.*
 proposed to be sold by him the said *C.* to the
 said *A.* for the Price of 16 l. of lawful Money
 of Great Britain, which said Monies were
 then and there paid by the said *A.* unto the
 said *C.* He the said *C.* did then and there
 undertake and warrant to the said *A.* that the
 said Horse so bargained and sold by him the
 said *C.* was the proper Horse of him the said
C. and that the same Horse did of Right be-
 long and appertain to him the said *C.* whereas
 R. in

Warranty. in Truth the same Horse was, at the Time of the said Bargain and Sale, the proper Horse of one K. G. and did of Right belong and appertain to him the K. G. and the said C. did then and there falsely and deceitfully sell the said Horse to the said A. and did accordingly then and there deliver the said Horse to the said A. as the proper Horse of him the said C. with such Warranty as aforesaid, to the Damage of him A. 20 l. And thereupon he the said A. brings this Suit, &c.

A Declaration against the Master of a Hoy for falling foul on, and sinking the Plaintiff's Boat.

In B. R.
*Against a Hoy
Master for
sinking the
Plaintiff's
Boat.*

Lilly 38.

Q. Hern 213.

Middlesex, to wit. **W**. B. complains of **J.** D. being in the Custody of the Marshal, &c. for that, *to wit*, That whereas the aforesaid **W.** on the sixth Day of *March* in the fourth Year of the Reign, &c. at the Parish of *Chelsea* in the said County of *Middlesex*, was lawfully possessed of a certain flat-bottom'd Boat, then loaden with Dung, Compost, Manure, &c. and floating at Anchor in the River of *Thames*, within the Parish aforesaid, as his own proper Boat; And whereas the aforesaid **J. D.** was then and there Master and Manager of a certain Barge then sailing in the said River of *Thames*, within the same Parish, towards the City of *London*; he the said **J. D.** did then and there so negligently and unskilfully guide and manage his said Barge, that the same Barge for want of good and sufficient Care and Guidance and Management did so violently rush, force

force against and fall foul on the said Boat of the said *W.* so loaden as aforesaid, that the same Boat was broken, and the Dung, Compost, &c. therein were sunk; By reason whereof he the said *W.* not only wholly lost and was deprived of all his said Dung, Compost, &c. contained in the same Boat, but also the whole Use, Profit, and Benefit of his said Boat, for the Space of 14 Days then next following, and was likewise put to great Charges and Expences in and about the raising, weighing up, recovering, repairing, &c. his said Boat: Whereupon he the said *W.* saith, that he is injured, and hath Damage to the Value of 40 *l.* And thereupon he brings this Suit, &c.

Wale-sea
gance.

A Declaration for untying a Cord or Rope that fastened a Boat, whereby she received Damage.

Norfolk, to wit. *C. D.* was attached to an-
swer to *A. B.* of a Plea,
That whereas he the said *A.* was on, &c. pos-
sessed of a certain Fishing-Boat, called *The Betty*, of the Value of 100 *l.* lying in the Port of *Great Yarmouth* in the same County, against the Side of a certain Wharf there, called *The Key*, and tyed with a certain Rope called a *Fast*, unto a certain Post erected upon the said Wharf in *Great Yarmouth* aforesaid, as of his own proper Fishing-Boat; and being so thereof possessed he the said *C. D.* contriving and maliciously intending to spoil and deprive the said *A.* of all Benefit and Advantage of his said Fishing-Boat, did afterwards, to wit,

In *C. B.*
For losing a
Boat tied to a
Wharf, &c.

Spale-stance.

on, &c. at *Great Tarmouth* aforesaid, voluntarily and maliciously untie the said Rope where- with the said Fishing-Boat was tied to the said Post, in the Manner aforesaid, whereby the said Fishing-Boat did float with the Stream; and the Water in the said Port then running with great Force and Violence towards the Stone Bridge in *Great Tarmouth* aforesaid, the said Fishing-Boat thereby was driven by the Violence of the Stream against the same Bridge with so great Force and Violence, that the same Fishing-Boat was thereby very much broken and damnified, to the Damage of the said *A.* 40 l. &c.

A Declaration on a Writ of Privilege by an Attorney against a Quack Doctor for an ill Cure.

In C. B.
By an Attor-
ney in his Pri-
vilege against
an Empyrick
for an ill Cure.
See Lib. Ent.
436. a. b.
11 H. 6. 8.
pl. 10.

London, to wit.

C. D. late of, &c. was at- tached by a Writ of our Lord the King of Privilege issuing out of the Court here, to answer *A. B.* Gentleman, one of the Attorneys of the Court of our Lord the King of the Bench here, according to the Liberty and Privilege of the same Court for such Attorneys and other Ministers of the same Bench Time out of Mind used and ap- proved in the same, of a Plea of Trespas on the Case, &c. And whereupon the said *A. B.* in his proper Person complains, That where- as he the said *A.* on the 20th Day of *August* in the sixth Year of the Reign of our Lord the now King, and long before had and hi- therto hath the Stone in his Bladder and an Excoriation in his same Bladder, by reason whereof

whereof he the ſaid *A.* endeavoured to find a Cure for the diſſolving of the ſaid Stone, and healing of the ſaid Excoriation in his ſaid Bladder, and the ſaid *C.* well knowing the Premiſſes, being a Man ignorant and unſkilful in the Cure of the Infirmities aforeſaid, contriving and intending craftily and ſubtilly to deceive and defraud the ſaid *A.* on the Day and Year aboveſaid, at *London* aforeſaid, in the Pariſh of *St. Mary Le Bow* in the Ward of *Cheap*, did aſſure and affirm to the ſaid *A.* That he was a Doctor of Phyſic, and was very ſkilful, and had the Knowledge and Art of diſſolving the ſaid Stone in the Bladder, and of healing the ſaid Excoriation therein; whereby he the ſaid *A.* giving Credit to the ſaid Aſſertion and Affirmation of the ſaid *C.* did then and there retain the ſaid *C.* to diſſolve the ſaid Stone in the Bladder of him the ſaid *A.* and alſo to heal the Excoriation in the ſame Bladder, whereupon he the ſaid *C.* for and in Conſideration of 10 Guineas then and there in Hand paid by the ſaid *A.* to the ſaid *C.* and a Promiſſory Note of Twenty Guineas more to be paid by the ſaid *A.* to the ſaid *C.* when he the ſaid *C.* ſhould have finiſhed the ſaid Cure, did undertake the ſaid Cure of diſſolving the ſaid Stone, and healing the ſaid Excoriation in the ſaid Bladder of the ſaid *A.* whereas he the ſaid *C.* at the Time of his ſaid Aſſertion and Affirmation aforeſaid, or ever afterwards or before, had no Knowledge or Skill of diſſolving the Stone in the Bladder, or of healing the Excoriation in the Bladder, nor ever was a Doctor of Phyſick, or a Li- cenſed Phyſician or Surgeon, &c. By reaſon whereof he the ſaid *C.* ſo negligently, igno-
Retainer and undertaking the Cure.
Ignorance of the Quack.

Right
Honour.

Damage to
the Plaintiff.

rantly and unskilfully did attend, manage and behave in and about dissolving the said Stone in the Bladder of the said *A.* and healing the Excoriation in the same Bladder, that he applied and gave to the said *A.* such Medicines as were not only unbecoming and improper, but even dangerous and pernicious and repugnant to the Dissolution of the said Stone in the said Bladder, and to the Cure of the said Excoriation; so that from thenceforth, and for want of Knowledge of the same *R.* in that Behalf the said Stone in the Bladder of him the said *A.* doth not only still remain undissolved, and the said Excoriation unhealed, but by reason of the said improper and pernicious and dangerous Medicines, so unskilfully administered by the said *C.* as aforesaid, the same are daily become more and more dangerous and hurtful to the said *A.* to the great Deceit and Impoverishment of the same *A.* and great Danger of losing his Life: Wherefore he saith, that he is injured, and hath Damage to the Value of 100 l. &c.

Pledges of Prosecution

{ John Doe,
and
Rich. Roe.

The

*The Entry of a Declaration against
a common Carrier for losing
Goods, &c. (on the general Cu-
stom of the Realm.)*

N. B. *Of the like Nature with this may
seem those before, touching Non-feasances,
as in negligent keeping of Fire, &c.
But here the Action is said to arise by
Reason of the Reward for the Car-
riage and Care of the Goods, which to
me seems an implied Contract or As-
sumpsit.*

*Pleas before our Lord the King, at West-
minster, of Easter Term in the Seventh
Year of the Reign of our Sovereign Lord
William the Third, now King of England,
&c. Roll. 242.*

London, to wit. **B**E it remembered, that *In B R.*
heretofore, to wit, in *Entry of a De-
claration, &c.*
Hilary Term last past, before our Lord the *against a com-
mon Carrier for*
King at Westminster came Sir J. D. Knight *Loss of Goods,*
and Baronet, by J. P. his Attorney, and *&c. See 2*
brought into the Court of our said Lord the *Salk. 307.*
King then there his certain Bill against J. J. *1 Salk. 10.*
a common Carrier, being in the Custody of *Dalston a-*
the Marshal, &c. of a Plea of Trespas upon *gainst Janson.*
the Case; and there are Pledges of the Pro-
secution,

Implied. secution, *to wit*, *John Doe* and *Richard Roe*; which said Bill follows in these Words, *to wit*, **London, to wit**, Sir *J. D.* Knight and Baronet, complains of *J. J.* a common Carrier being in Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, That whereas he the said *J.* on the 16th Day of *March* in the Year of the Lord 1693, was and long before, and always afterwards hitherto hath been, and yet is, a common Carrier of Goods and Chattels, Wares, Moneys, and other Commodities, and for his Profit hath used and been accustomed for and during that whole Time aforesaid to carry Goods, &c. for a certain Hire and Reward, from *Wakefield* in the County of *Tork* to *London*, and from *London* to *Wakefield* aforesaid, for any Person desiring such Carriage; And whereas by the Law and Custom of *England*, every common Carrier of Goods and Chattels, who receives the Goods and Chattels of any Person so to be carried for Hire or Reward, is bound to keep and carry the same without Substraction and Loss; so that no Damage may in any Manner arise to such Person from the Negligence or Want of Care in such common Carrier or his Servants; And whereas the said *J.* on the said 16th Day of *March* in the said Year of the Lord 1693, at *London* aforesaid, *to wit*, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, was possessed of the Goods and Chattels following, *to wit*, one Deal Box, containing 100 Pieces of coined Gold, called *Guineas*, of lawful Money of *Great Britain*, as of his own proper Goods and Chattels, and he the said *J.* being so possessed thereof, did on the same

16th

16th Day of *May* in the said Year of the Lord 1693, at *London* aforesaid, to wit, in the Parish and Ward aforesaid, deliver the said Deal Box, with the said 100 Pieces of coined Gold therein contained, unto him the said *J. J.* to be carried from *London* aforesaid to *Wakefield* in the said County of *York* aforesaid, and there to be delivered, he the said *J.* being to have a Reward and Hire for the said Carriage and Delivery as aforesaid; and he the said *J.* did then and there take and receive the same Box, with the said 100 Pieces of coined Gold, called *Guineas*, to be carried and delivered in the Form aforesaid; yet he the said *J.* hath not at any Time afterwards hitherto carried and delivered the said Box, with the said 100 Pieces of coined Gold, called *Guineas*, in Manner as aforesaid, nor re-delivered the same, or any Part thereof, to the said *J. D.* or to any other Person to his Order, but the same Box, together with the said 100 Pieces of coined Gold, called *Guineas*, therein contained as aforesaid, were afterwards, to wit, on the 17th Day of *March* in the said Year of the Lord 1693, at *London* aforesaid, in the Parish and Ward aforesaid, by reason of the said Negligence and Want of Care in the Custody thereof by the said *J. J.* wholly lost and destroyed. (Note; *In the Original there is another Count added in Trover for the said Box and Guineas; but the Court held that to be of a different Nature from the above, and therefore not to be joined in the same Declaration.*) To the Damage of him the said *J. D.* 150*l.* And thereof he brings his Suit.

To this the Defendant pleaded Not Guilty, &c. See 2 *Salk.* 704.

Shallice.

A Declaration in Case for arresting, and holding to Special Bail where none is required by Law.

Entred Trin. 10th of W. 3. Roll 162.

Robins against Robins.

*In B. R.
For arresting
and holding to
Bail where
none is re-
quired by
Law. See
2 Salk. 727.
1 Salk. 15.*

*Cornwall, to wit. S. R. Gent. complains of J. R. Gent. being in the Custody of the Marshal, &c. for that, to wit, that whereas he the said J. never had any lawful Cause of Action against him the said S. so that by the Laws and Statutes of this Kingdom, the Body of him the said S. ought not to have been taken, arrested, and detained in Prison until he the said S. should find sufficient Bail to answer to the said J. in the same Cause (Action) yet he the said J. well knowing the Premisses, but contriving and maliciously intending unjustly to grieve, vex, prejudice, damnify, oppress and injure him the said S. in this Particular, and as much as he could to hurt, blacken, detract from the good Fame, Credit, Reputation, &c. he the said J. on the 28th Day of May in the 9th Year of the Reign of our Sovereign Lord William the Third, now King of England, &c. at B. in the County aforesaid, did by Colour and Pretence of a certain Mesne Process in the Law commonly called a *Latitat*, cause the said S. to be arrested and charged with an Action of 10 l. as so much Money due by the said S. to him the said J. and although*

*Note; By the Stat. 13 C. 2. c. No Man was to be held to Special Bail, except the Cause of Affi-
on was 20 l. or upwards.
See the Stat. and Q. inde?*

On Wale-sealances.

251

Malice.

he the said *S.* did then and there, by his Attorney, tender an Appearance or Common Bail to the same Action, and hath been always ready to appear to the same Mesne Process, at the Day of the Return thereof to answer to the same *J.* according to the Command of the same Process; yet he the said *J.* maliciously caused and procured the same *S.* then and there, *to wit*, on the Day and Year abovesaid, at *B.* abovesaid, to be imprisoned, and there in Prison to be detained for the Space of six Months then next following for this Cause only, *to wit*, that he the said *S.* did not then and there find sufficient Bail to answer to the said *J.* upon the said Process; whereby he the said *S.* was unjustly compelled to lay out and expend great Sums of Money for his Sustenance in the said Prison, and the necessary Affairs of him the same *S.* during the same Time were neglected and left undone; and the said *S.* was also thereby greatly prejudiced in his Manner of Life, very much troubled and disordered in his Mind, and greatly hurt in his Credit and Reputation, whereof he the said *S.* saith, that he is injured, and hath Damage to the Value of 150*l.* &c.

A Do-

Declarations, &c.

A Declaration for maliciously arresting in the Sheriff's Court, from whence it was removed by Habeas Corpus into B. R. and the Plaintiff there non-prossed.

*In B. R.
For a malicious Arrest in the Sheriff's Court, and thence removed by a Habeas Corpus, &c.
See Lilly 35.*

Without probable Cause.

London, to wit. **H.** B. the Younger complains of **J. T.** being in the Custody of the Marshal, &c. for that, to wit, That whereas the said **J.** contriving and maliciously intending unjustly to grieve and oppress the same **H.** and to cause him to be kept and detained in Gaol for want of Bail, on the 23 Day of November in the 12th Year of the Reign of our late Sovereign Lady Anne, late Queen of Great Britain, &c. at London aforesaid, to wit, in the Parish of, &c. in the Ward of, &c. and within the Jurisdiction of the Court of the said late Queen, held before **J. S.** Esq; one of the Sheriffs of the said City of London, caused and procured him the said **H.** to be arrested and imprisoned by Pretence and Colour of a certain Plaint, entered and levied in the said Court of the said late Queen, held before the same Sheriff at London aforesaid, in the Parish and Ward aforesaid, on the same Day and Year, at the Suit of him the said **J.** in a Plea of Trespass on the Case there laid against him **H.** to the Damage of him the said **John** of 500*l.* and whereas in Truth and in Fact he the said **J.** had at the Time of the said Arrest and Imprisonment no probable Cause of Action against the same **H.** yet he the said **J.** did detain and caused to be detained the said **H.** in Prison under that Arrest, at London aforesaid, in the Parish

Parish and Ward aforesaid, from the said Time of the said Arrest, until and upon the 10th Day of *December* in the 13th Year of the Reign of the said late Queen, for want of Bail, to answer to the said pretended Demands in the said Action, on which said 10th Day of *December* in the Year last aforesaid, he the said *H.* was by Virtue of a certain Writ of the said late Queen of *Habeas Corpus cum Causa*, directed to the Mayor, Aldermen and Sheriffs of *London*, brought, being then in Custody by the said *J. Sharp*, and one *Francis Forbes*, Esq; Sheriffs of *London* aforesaid, before *R. E. Knt.* then a Justice of the said late Lady the Queen (assigned to hold Pleas in the Court of the said Lady the Queen before the Queen herself) at his Chamber, situate in *Serjeants Inn* in *Chancery-Lane* in the Parish of *St. Dunstan's* in the West in the Ward of *Farringdon* without, and then and there for Default of Bail and Security to answer to the said *J.* in the Plea aforesaid, was by the same Justice committed to the Custody of the Marshal, &c. at the Suit of the said *J.* in the Plea aforesaid, as by the said Writ of *Habeas Corpus* of the said *H.* and the Return thereof, and the Commitment of the said *H.* now remaining filed of Record in the Court of the now Lord the King at *Westminster*, before the King himself, doth more fully and certainly appear; by Virtue of which said Commitment one *M. C.* Esq; then Marshal of the *Marshalsea* of the said Court of the said late Queen, before the Queen herself, afterwards, to wit, on the said 10th Day of *December* in the Twelfth Year of the said Queen, as aforesaid, took and had him the said *H.* into his Custody

Hab. Corp.
cum Causa
sued.

Justice.

*Plaintiff non-
prossed for not
declaring, &c.*

*A Superse-
deas thereon.*

Custody in the said Prison of the said late Queen, and from that Time always afterwards, until the 14th Day of *October* then next following, detained the said *H.* in the same Prison for want of Bail, to answer to the said *J.* in the Plea aforesaid, without any Bill or Declaration being [tho' no Bill, &c. was] during the whole Time of the said Imprisonment, exhibited, delivered or filed against him the said *H.* in the said Court of the said late Queen, before the Queen herself, in the Cause aforesaid, and without any Prosecution whatsoever in the same Cause or Action. Therefore it was thereupon considered by the said Court of the said Lady the Queen, before the Queen herself, that the said *John* should take nothing by his said Plaint, but that he and his Pledges, *to wit*, *John Doe* and *Richard Roe* should be thereof in Mercy, and that the aforesaid *H.* should go thereof without Day; and upon that Occasion he the said *H.* afterwards, *to wit*, the same Day and Year last mentioned, by Virtue of a certain Writ of the said late Lady the Queen of a *Superse-deas* issuing out of the said Court of the said late Lady the Queen, before the Queen herself, directed, delivered to the Marshal of the *Marshalsea* of the Court of the said Lady the Queen, before the Queen herself, commanding the said Marshal, that he should without Delay deliver the said *H.* from the said Prison of the said late Lady the Queen, wherein he was then detained, according to the Command of the same Writ, as by that Writ remaining filed of Record in the Court of the Lord the now King, before the King himself, may more fully and plainly appear: And also

also whereas in Truth and in Fact he the **Conspiracy.**
 said J. T. had at the Time of levying the said
 Plaint in the aforesaid Court of the said late
 Lady the Queen, before the said Sheriffs of *Averment of*
 London, against him the said H. or at any *no Cause of*
 Time before or afterwards, no probable Cause *Action.*
 of Action whatsoever against the said H. for
 the aforesaid pretended Damage of 500*l.* or
 any Part thereof, nor any Colour or Pretence
 to arrest him the said H. for the said 500*l.*
 or any Part thereof; by reason of which said
 unjust and malicious Arrest and Imprisonment *The Graver*
 of him the said H. he the said H. was not only *men.*
 detained in Prison, and deprived of his Li-
 berty during the whole Time aforesaid, but
 also he the said H. was forced and compelled
 to undergo, and be at great Labour, Charges,
 and Expences for the obtaining of the Dis-
 charge of his Imprisonment, *to wit,* at London
 aforesaid, and in the Parish and Ward first
 abovementioned: Whereupon the said H.
 saith, that he is injured, &c. Damages 500*l.*

*A Declaration in Case on a Conspiracy to
 indict one for Barratry.*

Middlesex, to wit. **R.** G. complains of *In B.R.*
 being in the Custody of the Marshal, &c. For *R. S. and C. P.*
 that, *to wit,* That whereas he the said R. G. *Case on a Con-*
 was and always hath been, and still is a good, *spiracy to in-*
 true, faithful, peaceable and honest Subject *dict one of Bar-*
 and Liegeman of our Sovereign Lady the now *ratry. See 2*
 Queen, and of good Name, Fame and Reputa- *Salk. 763,*
 tion, Conversation, Behaviour, Condition, and *764. and*
 hath always behaved himself as a good, true, *Mich. 3 Ann.*
 faithful, *Rot. 144.*

Conspiracy. faithful, peaceable and honest Liegeman and Subject of our said Lady the now Queen, without any Scandal, Imputation, Spot or Stain of the Crime of Barratry, and from the Time of his Birth hitherto hath always been reputed and known among his Neighbours, and other Subjects of the said Lady the now Queen, to whom he the said R. G. was known to be wholly free from and unstained with the said Crime of Barratry, to behave and govern himself as a good, quiet and peaceable Subject, and to be in no wise a Disturber of the Peace of our said Lady the now Queen; And whereas he the said R. G. by reason of his said good, quiet, peaceable and honest Conversation during the whole Time aforesaid, was of good Credit and Estimation, and did lawfully and honestly gain, obtain and acquire among his Neighbours, and other Subjects of our said Lady the now Queen, with whom he the said R. G. had any Dealings, divers great Gains and Profits for the Sustainance and Support of himself and his Family; yet they the said R. S. and C. S. being not ignorant of the Premises, but contriving and maliciously intending not only to deprive him the said R. G. of his said good Name, Fame and Estimation, but also to bring him the said R. G. into public Infamy, Scandal and Disgrace, that by that Means the good and honest Subjects of the said Lady the now Queen might withdraw themselves from the Society and Company of him the said R. G. and might wholly cease and abstain from any Way of corresponding with or having any Commerce or Dealings with him, on the 10th Day of *September* in the first Year of

2

the

the Reign of our said Lady *Anne*, now *Conspiracy.*
 Queen of, &c. at the Parish of *St. James*
Clerkenwell in the County aforesaid, by a
 Conspiracy among themselves, then and
 there before had, did then and there falsly
 and maliciously, without Cause or Colour of
 any such Crime committed by him the said *R.*
G. lay the said Crime of Barratry to the
 Charge of the said *R. G.* and cause him to
 be indicted as a Barrator, and as a publick
 and common Disturber of the Peace of our
 said Lady the now Queen, and they the said
R. S. and *C. P.* at the Parish aforesaid in
 the said County of *M.* in Prosecution and
 Execution of their said malicious Intention
 and Conspiracy aforesaid, and with a malici-
 ous Intention to blacken, defame and scan-
 dalize the said *R. G.* did falsly and mali-
 ciously, without any legal or true Cause,
 indict, and procure and cause to be indict-
 ed the said *R. G.* by the Name of *R. G.*
 late of the Parish of *St. James Clerkenwell* in
 the County of *M.* Yeoman, at the General
 Quarter-Sessions of the Peace of our said La-
 dy the now Queen, then held at *Hicks's* *The Indict-*
Hall in and for the said County of *Middlesex*, ment at
 before *John Bennet*, *Henry Hawley* and *Jo-* *Hicks's Hall;*
seph Offley, Esqrs. and others their Compa- (Note.)
 nions, Justices of our said Lady the Queen,
 assigned to keep the Peace, within the said
 County, and also to hear and determine di-
 vers Felonies, Trespasses, Contempts and
 Male-feasances perpetrated within the same
 County (*as follows*, to wit,) That he the
 same *R. G.* on the first Day of *January*, &c.
 (*setting forth the Indictment to*) contrary to
 the Peace of our said Lady the now Queen,
 S her

Conspiracy. her Crown and Dignity; And thereupon they the said R. S. and C. P. did further *Removed by Certiorari.* falsely and maliciously prosecute, and caused to be prosecuted the same Indictment against him R. G. until our said Lady the now Queen did afterwards, for certain Causes, cause that Indictment be brought before her to be determined: And it was commanded, That the Sheriff of the County aforesaid should not omit, &c. but that he should certify the said Indictment, &c. and cause him the said R. G. to come before her, &c. to answer, &c. And he the said R. G. afterwards, to wit, in the Term of St. Michael in the Second Year of the Reign of our said Lady the now Queen, in the Court of our said Lady the Queen, before the Queen herself, *And discharged in B. R.* the same Court being then at *Westminster*, was according to the Law and Custom of *England*, discharged in a due and lawful Manner from the said Indictment, by Reason of which said Conspiracy, Indictment and Premisses, so contrived, published, made, exhibited and prosecuted by them the said R. S. and C. P. against him the said R. G. in the Form aforesaid, he the said R. G. is not only very much hurt and prejudiced in his good Name, Fame, Credit and Reputation, and weakened in his Body, and troubled and disordered in his Mind, but also hath been forced to be at great Costs and Charges, and to lay out and expend divers great Sums of Money for the discharging and acquitting himself from the said Indictment, and for the Vindication of his Innocence, to the great Disgrace and extream Impoverishment of

of him the said R. G. to the Damage of him the said R. G. 100*l.* &c.

Malice-
sance.

And now at this Day, to wit, *Monday* next after three Weeks of *St. Michael* in this same Term, to which Day they the said R. S. and C. P. had Leave to Imparl to the said Bill, and then to answer, &c. before our Lady the Queen, at *Westminster*, came as well the said R. G. by his Attorney aforesaid, as the said R. S. and C. by E. B. their Attorney; and they the said R. S. and C. defend the Force and Injury, when, &c. and say, That they are in nothing guilty of the Premises above charged upon them as the said R. G. doth above complain against them: And hereof they put themselves upon the Country; and the said R. G. likewise, &c. Therefore let a Jury come (&c. *as usual* in Cases of awarding *Venires*) *vide ante*.

Imparlance,
and Not guilty
pleaded.

Note.

See further of malicious Suits, &c. ante.

Declaration against a Headborough for billeting Soldiers on the Plaintiff without his Assent.

Suffer, to wit. T. M. the elder, complains of W. H. being in the Custody of the Marshal, &c. for that, to wit, That whereas he the said W. on, &c. at the Parish of C. near *Lewes* in the said County of S. (he the said W. being then a Civil Officer, to wit, a Headborough for the half Hundred of L. in the same County) unjustly, unlawfully and maliciously billeted certain Persons, to wit, C. N. R. T. and G.

In B. R.
Against a
Headborough
for unduly bil-
leting Soldiers.
Note; The old
Law therein
is now altered,
but fit to be re-
vised.

Dilapidations.

K. being three Dragoons of our said Lord the now King, upon him the said *T. M.* he the said *T. M.* being then a Subject of our said Lord the now King, and also an Inhabitant in the Parish, half Hundred, and County aforesaid, without the Consent of him the said *T.* in that Particular first had and obtained; which said three Dragoons were, by Reason of the billeting of them by the said *W.* as aforesaid, lodged and quartered by him the said *T.* from the said 26th Day of November until the 20th Day of May then next following, against the Will and Consent of him *T.* and contrary to the Form of the Statute in such Case made and provided: By Pretence of which said billeting and quartering aforesaid, he the said *T.* was for and during the Time aforesaid hinder'd from the quiet Use of his said House, and interrupted in his daily Affairs; and also compell'd to lay out and expend divers Sums of Money for the Sustentation and Maintenance of the said three Dragoons, during the whole Time aforesaid: Whereupon the said *T.* saith he is injured, and hath Damage 50*l.* 3*s.*

A Declaration by a Vicar against the Executors of the late Vicar for Dilapidations.

In B. R.

Against the
Executors of
a Vicar for
Dilapidations.

See Lilly 21,
67, 22.
Prac. Reg.
461.
Clerg. Law
312.

York, to wit. *E. M.* Vicar of the Church of *E.* in the County aforesaid, complains of *J. S.* Gentleman, *E. C.* Clerk, and *H. B.* Widow, Executors of the Testament and Last Will of *T. W.* Clerk, late Vicar of the said Church of *E.* in Custody

stody of the Marshal, &c. for that, to wit, That whereas according to the Law and Custom of *England*, which hath hitherto obtained and been approved, all and singular the Prebendaries, Rectors and Vicars of the same Kingdom, for the Time being, are bound to repair and sustain and uphold all and singular the Houses and Edifices of their respective Prebends, Rectories, and Vicarages, and leave the same so repaired and sustained to their Successors; and that if they do not leave the Houses and Edifices of such their Prebends, Rectories and Vicarages so repaired and sustained to their Successors, but permit them to be unrepaired; then the Executors of such Prebendaries, Rectors and Vicars, after their Deaths, shall be bound to satisfy to their Successors, out of the Goods and Chattels of the Testator, so much Money as is necessary and sufficient for the repairing and re-edifying of such Houses and Edifices: Yet he the said *T. W.* late Vicar of the said Church of *E.* left at the Time of his Death the Houses and Edifices of that Vicarage unrepaired and dilapidated, so that 200*l.* will not be sufficient to repair the said Houses and Buildings: And altho' they the said *J. E.* and *H.* after the Death of the said *T.* to wit, on, &c. at *E.* aforesaid, were requested to pay to the said *E. M.* so much Money as was sufficient for the repairing, &c. of the said Houses and Edifices of the said Vicarage: Yet they the said *J. E.* and *H.* and every of them, have altogether wholly refused, and yet do refuse to satisfy the said *E. M.* in any Manner, for the said

Printing.

Irreparations and Dilapidations, to the Damage of him *E. M. 500 l. &c.*

A Declaration for printing another's Copy without Licence of the Owner.

In B. R.
For printing
another's Copy.
See Lilly 67.

*The Plaintiff's
Property, and
that he had
printed an Im-
pression, and
had sufficient
in his Hands
undisposed, &c.*

London, to wit. **D.** B. complains of *T. B.* being in the Custody of the Marshal, &c. for that, to wit, That whereas he the said *D. on*, &c. at London asforesaid, to wit, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, was, and from that Time continually hitherto hath been, and still is, the true Proprietor of the Copy of a certain Book, intituled, *The English Lawyer*, &c. (i. e. setting forth the Title-Page, as far as the Author's Name inclusive,) And that he the said *D. B.* after his being (becoming) Proprietor of the said Copy of the said Book, did imprint, or cause to be imprinted 1500 Books of the first (*second*, &c.) Impression thereof, and on such a Day in the — Year abovesaid, at London asforesaid in the Parish and Ward asforesaid, had then remaining in his Hands more than 100 Books of the said Impression (and on the same Day, or any other Day, between that and bringing the Action at London asforesaid, was preparing, or had prepared the Printing Press for a second, &c. Edition of the same Book, i. e. if the Case be so) Yet he the said *T.* being not ignorant of the Premisses, but contriving and fraudulently intending wholly to deprive the said *D. B.* of all the Profit and Benefit of his said Copy, afterwards, to wit, on the same Day, &c. in the sixth Year abovesaid,
at

at *London* abovesaid, in the Parish and Ward *Printung.*
 abovesaid, did without the Licence or Con-
 sent of the said *D. B.* imprint, or cause to
 be imprinted, 2000 Books of the Copy of
 the said Book of him the said *D. B.* with this
 following Title, to wit, *The Practising English* *And that the*
Lawyer, &c. (i. e. *setting forth the Title of* *Defendant pi-*
the pirated Impression) And he the said *T. D.* *rated an Im-*
 did afterwards expose the same Books, so sur- *pression there-*
 reptitiously and fraudulently printed, to Sale,
 whereby he the said *D. B.* did totally lose
 the Profit and Benefit of the Sale of his said
 Books, intituled, &c. (*as the first Title above*)
 so remaining in his the said *D. B.*'s Hands,
 as aforesaid; And also of a second (*third,*
 &c.) Impression of the same Book: Where-
 fore he the said *D. B.* saith, That he is in-
 jured, and hath Damage to 200*l.* And there-
 upon he brings his Suit, &c.

See also Lilly's Entries, fol. 63, 64. *A De-* *By a Patent*
claration by Patent Printers against another *Printer for*
Printer, for printing Almanacks without their *printing sans*
Consent (*sed Quære the Legality of such a Pa-* *his Assent.*
tent.)

Before I conclude this Head of Actions on *Note.*
 the Case for Torts, give me Leave to add a
 few Precedents touching Actions by or against
 Attorneys, Clerks, Bailiffs, Sheriffs, and other
 Officers and Ministers of Justice..

Declarations and Pleadings in Actions brought by and against Attorneys, Solicitors, Clerks, and Officers of Justice, as Bailiffs, Sheriffs, &c.

Note; We have before given some Precedents of Actions on the Case, by and against Attorneys, for which see Page 6, & alibi, ante.

A Declaration by an Attorney against an Executor, for Fees, &c. of soliciting a Suit in Chancery, &c.

In C. B. Middlesex, to wit. **W**. T. Executor of
 By an Attorney against an Executor for Fees of soliciting in Chancery, &c. the Testament
 of E. T. deceased, was attached by Writ of Privilege to answer to T. H. [vide antea fo. —] one of the Attornies of the Court of the Lord the King of the Common Bench, being present here in Court of a Plea, That whereas the said E. in his Life-time, to wit, on, &c. at 7. in the County aforesaid, in Consideration that he the said T. would, at the special Instance and Request of the said E. solicit and transact for him the said E. as an Attorney or Solicitor, a certain Cause or Suit then commenced and depending in the Court

See Hern 178, 179.
 See the like Declarations, Tr. 12 Jac. 1. Rot. 2133.
 Tr. 16 Jac. 1. Rot. 2077.
 &c. Tr. 17 Jac. 1. Rot. 513.

Attorneys.

See also *Hern*
195 & 156.
Lev. Ent. 23.
Lilly 27.

Court of Chancery of our said Lord the King, and appear for the said *E.* in the said Court of Chancery, then being at *Westminster* in the said County of *Middlesex*, to a certain Bill of Complaint then depending in the same Court, and before that Time there exhibited against the said *E.* by one *W. T.* and would there defend the same Cause or Suit, for and on Behalf of the said *E.* &c. he the said *E.* did undertake, and unto the said *T.* then and there faithfully promised to pay to the said *T. H.* for his Labour for every Term wherein he the said *T.* should sollicite the said Cause for him the said *E.* in the Form aforesaid, the Sum of 6 s. 8 d. besides Attornies Fees, and all other Costs and Expences which should be laid out and expended by him the said *T.* in and about the Solicitation and Defence of the said Cause or Suit, when he the said *E.* should be afterwards thereunto required: And whereas although he the said *T.* did afterwards, to wit, such a Day in the Term, &c. aforesaid, appear for him the said *E.* in the said Court of Chancery, to the said Bill of Complaint there exhibited against the said *E.* by the said *W. T.* as aforesaid, and did sollicite and defend that Cause for the said *E.* in his Lifetime in the Term aforesaid, and for seven Terms then next following in the same Court of Chancery; for which said eight Terms Solicitation there was due to him the said *T. H.* from him the said *E.* the Sum of, &c. And whereas there was also due to him the said *T.* from him the said *E.* for Attornies Fees, for transacting the Affairs of the said *E.* for and during the same eight Terms, the
Sum

Declarations, &c.

Attornies. Sum of, &c. And also whereas there was due to him the said *T.* from him the said *E.* for Monies expended and disbursed by him the said *T.* in and about the Defence of the same Suit, being paid by the said *T.* to divers Clerks, Ministers and Officers of the same Court, the Sum of, &c. which said several Sums do amount in the whole to the Sum of, &c. Yet he the said *E.* in his Life-time, and the said *W. T.* since his Death, nor regarding the Promises and Undertakings of the said *E.* so made as aforesaid, but contriving and fraudulently intending to deceive and defraud him the said *T.* in this Particular, have not, nor hath either of them, paid to the said *T.* the said Sum of, &c. nor any Penny thereof, although he the said *E.* in his Life-time, and the said *W. T.* since his Death, to wit, on the third Day of November in the said sixth Year, &c. at *J.* aforesaid in the County aforesaid, and each of them, have at divers other Times and Places been thereto requested by the said *T. H.* but they the said *E.* and *W.* have altogether refused, and the said *W.* doth still refuse to pay the same, to the Damage of him *T. H.* 50l. And thereupon he brings this Suit, &c.

See Lev.
Entr. 1.

The Pledges of the Prosecution are { John Doe,
and
Rich. Roe,

See Hern 143, 145, 180, 183, of Declarations against Attorneys, for appearing, &c. without Warrant, &c.

The

*The Entry of a Declaration by Bill
in C. B. against an Attorney on
an Indeb. Assump. for Goods
sold and delivered.*

*Against an
Attorney.*

Hilary, the third of King George (the
first) Roll 1367.


Middlesex, to wit. **B**E it remember'd, that
the third Day of Ja-
nuary in this same Term, *Anne Lewin*, Wi-
dow, came here into Court by *J. K.* her At-
torney, and exhibited to the Justices here
her certain Bill against *H. Mackreth*, Gentle-
man, an Attorney of the Lord the King's
Court here, being present here in his proper
Person, the Tenor of which said Bill follows
in these Words; To our Lord the King's Ju-
stices of the Bench, to wit, *Middlesex, to
wit, A. L. Widow*, by *J. K.* her Attorney,
complains of *H. M.* Gentleman, one of the
Attornies of the Court of our Lord the King
of the Bench here, present here in Court in
his proper Person, of a Plea of Trespass on
the Case; for that, to wit, That whereas
the aforesaid *H.* on the first Day of *August* in
the Year of our Lord 1712, at the Parish of
St. Clement Danes in the County of *Middlesex*,
was indebted to the same *A.* in 20*l.* of law-
ful Money of *Great Britain*, for divers Goods,
Wares and Merchandizes of her the said *A.*
by

*1st Count,
Ind. Assump.*

Attorneys. by the said *A.* at the special Instance and Request of the said *H.* to him the said *H.* before that Time sold and delivered; And being so thereof indebted he the aforesaid *H.* in Consideration thereof, afterwards, to wit, on the same Day and Year, at the Parish of *St. Clements Danes* aforesaid, undertook, and to the said *A.* then and there faithfully promised, That he the said *H.* would well and faithfully pay and content the aforesaid 20*l.* unto the said *A.* when he should be thereunto afterwards required: And also whereas the aforesaid *H.* afterwards, to wit, on the same Day and Year, at the aforesaid Parish of *St. Clement Danes* in the County aforesaid, in Consideration that the aforesaid *A.* had at the like Instance and Request of him *H.* before that Time sold and delivered to him *H.* divers other Goods, Wares and Merchandizes of her the said *A.* he the said *H.* did undertake, and unto the same *A.* did then and there faithfully promise, That he the said *H.* would well and faithfully pay and satisfy to the said *A.* such Sums of Money for the said Goods, Wares and Merchandizes last mentioned, as they were reasonably worth at the Time of the Sale and Delivery, whenever he should be afterwards thereunto required: And the said *A.* in Fact saith, That the said Goods, Wares and Merchandizes last mentioned, were at the Time of the said Sale and Delivery thereof reasonably worth other 20*l.* of like lawful Money, to wit, at the Parish of *St. Clement Danes* aforesaid; whereof the said *H.* then and there had Notice: And whereas the aforesaid *H.* after the first Day of *May* in

2d Count,
Quant. vale-
bant.

3d Count,
Promissory
Note.

in the Year of the Lord 1705, to wit, the *Attornies.*
 eleventh Day of *November* in the Year of 
 our Lord 1712, at the Parish of St. *Clement*
Danes aforesaid in the County aforesaid, made his certain Note in Writing, with his
 proper Hand thereto subscribed, bearing Date the same Day and Year, by which said
 Note he the said *H.* did promise to pay to the same *A.* or Order, within three Months
 after Date of the said Note, seven Pounds for Value received, by the same *H.* By Reason
 of which Premisses, and also by Force of the Statute in such Case made and provided, he
 the said *H.* became liable to pay to the said *A.* the same Sum of Money, to wit, seven Pounds,
 according to the Tenor of that Note; And in Consideration thereof, he the said *H.* did
 undertake, and to the said *A.* did then and there faithfully promise to pay that Sum of
 Money, according to the Form and Effect of the Note aforesaid: And also whereas the a-
 foresaid *H.* after the aforesaid first Day of *May* *4th Count,*
 in the aforesaid Year of our Lord 1705, to wit, *On a Note*
 on the said eleventh Day of *November* in the *payable in six*
 Year of our Lord 1712 above-mentioned, at the Parish of St. *Clement Danes* aforesaid in the
 County aforesaid, did make a certain other Note of his in Writing with his proper Hand
 thereto subscribed, bearing Date the same Day and Year, by which said Note last men-
 tioned the said *H.* promised to pay, within six Months after the Date of the said Note,
 unto the said *Anne*, or Order, seven Pounds for Value received by the same *H.* And by
 Reason of the Premisses, and also by Force of the Statute in such Case made and provided,
 he

Attorneys. he the said *H.* became liable to pay to the said *Anne* the same Sum of Money last mentioned, according to the Tenor of the said other Note last mentioned; And in Consideration thereof, he the said *H.* did undertake, and then and faithfully promised the said *A.* to pay her that same Sum last mentioned, according to the Form and Effect of the said Note last mentioned: Yet he the aforesaid *Henry* not regarding his said Promises and Undertakings aforesaid, made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Anne* in this Particular, hath not paid the aforesaid several Sums of Money, or any Penny thereof, to the said *A.* or in any Manner satisfied her for the same (although the said *H.* was on the first Day of *August*, and at several Times before and after, required to do it by the same *Anne*, to wit, at the Parish aforesaid in the County aforesaid) but he hath hitherto refused, and doth yet refuse to pay it to her, or in any Manner to satisfy her for the same, to the Damage of her *Anne*, forty Pounds: *And thereupon she prays her Remedy, &c.*

Note; Petit Remedium, &c. is the proper Conclusion of Declarations by Bill against an Attorney, &c.

To this Declaration the Defendant pleaded the Statute of Limitations, &c. as follows.

The

The Statutes of Limitations pleaded to a Declaration by Bill against an Attorney in C. B. with a Replication and Demurrer thereto.

AN D the aforesaid *H.* in his proper Person *The Statute of Limitations* comes and defends the Force and Injury *pleaded.* when, &c. and saith, That the aforesaid *Anne* ought not to have her Action aforesaid against him, because he saith, that he the said *H.* did not undertake at any Time within six Years next before the Day of exhibiting the Bill of her *A.* as she the said *A.* doth above declare against him : And this he is ready to verify : Wherefore he prays Judgment, whether the aforesaid *A.* ought to have her Action against him, &c.

And the aforesaid *A.* saith, that she for *Replication* any thing before alledged ought not to be barred from having her Action aforesaid against the said *H.* because she saith, that the aforesaid *H.* within six Years before the Day of exhibiting the Bill of her *A.* to wit, on the aforesaid first Day of *August* in the Year of the Lord 1712, at the Parish of Saint *Clements Danes* aforesaid in the County aforesaid, undertook in Manner and Form as she the same *A.* doth above complain against him : And this she prays may be inquired of by the Country.

And the aforesaid *H.* saith, that the aforesaid *Plea* of the aforesaid *A.* above by replying *Demurrer.* pleaded, and the Matter therein contained,

Declarations, &c.

Attorneys.

ed, are insufficient in the Law for the aforesaid *A. L.* to have her Action aforesaid to be maintained against him the said *H.* thereupon; And that he the said *H.* hath no Necessity, nor is he bound by the Law of the Land to answer to that Plea, in the Manner and Form aforesaid pleaded: And this he is ready to verify: Whereupon for Default of a sufficient Replication of the aforesaid *A.* in this Particular, the same *H.* prays Judgment; and that the aforesaid *A.* be barred from having her Action thereof against him the said *H.*

James Selby.

*Joinder in
Demurrer.*

And the aforesaid *A.* for that she hath in her Plea aforesaid above by replying pleaded alledged sufficient Matter for her *Anne* to have and maintain her Action aforesaid against the said *H. M.* which said Matter the said *H.* doth not deny, nor any way answer thereto, but wholly refuses to admit that Verification thereof: Therefore she the said *A.* as before, prays Judgment and her Damages, by occasion of the Premisses to be adjudged to her.

Upon this Demurrer I am informed Judgment was given for the Defendant Mr. Henry Mackreth, an Attorney, and thereby the poor Widow lost a just Debt.

A De-

A Declaration against an Attorney for razing a Deed whereby it became void.

Middlesex, ff. **S**. H. Esq; complains of *W. J.* In C. B.
Against an
Attorney for
razing of a
Deed, &c.
S. an Attorney of the Court of the Lord the King of the Bench, present here in Court; for that one *T. V.* on, &c. at *D.* in the County aforesaid, made a certain Bill indented, sealed with the Seal of the said *T. V.* for a Debt of 10 *l.* by which said Bill the aforesaid *T. V.* was held to the said *S. H.* in the aforesaid Sum of 10 *l.* to be paid to the said *S. H.* at a certain Day now past, which said Bill the aforesaid *S. H.* did (at *such* a Day and Place) deliver to the aforesaid *W.* to be prosecuted against the aforesaid *T. V.* upon an Action of Debt for the aforesaid 10 *l.* upon the Bill aforesaid; and the said *W.* in Consideration of 3 *s.* and 4 *d.* to him beforehand paid, did then and there undertake and promise to prosecute the Writ aforesaid, for the aforesaid *S. H.* for the Debt aforesaid, in Form aforesaid: Yet the said *W.* afterwards, *to wit,* (*such* a Day and Year at, &c.) deceitfully, craftily and fraudulently, the aforesaid Bill in divers Parts and Places of the same, at, &c. aforesaid, hath razed and obliterated divers Words, so that the aforesaid Bill is of no Force. And the said *S. H.* for that Cause could not recover his Debt aforesaid, to the Damage of the said *S. H.* 20 *l.* And thereupon he prays Relief.

Pledges to prosecute { *John Doe,*
 Richard Roe.

T

And

Attorneys.

*Plea that D.
is an Attorney
C. B. suable
only by Bill,
and not by
Original.
Lillys En-
try's 3, 9.
Skin. 582.*

And the said *A.* in his proper Person comes and saith, that he ought not to be compelled to answer the said original Writ, because he says that he is, and on the Day of suing out the said original Writ, and long before was one of the Attorneys of the Court of the Lord the King of the Bench here, and that in the same Court here is and from the Time beyond the Memory of Man hath been a Custom used and approved of in the same Court, that no Attorney of the said Court hath against his Will been compelled to answer any Person in any personal Action prosecuted in the same Court here by original Writ sued out (which have not concerned the King) unless he hath been first forejudged from his Office of an Attorney of this Court upon a Bill exhibited here to the Justices of the said Lord the King of the Bench against such Attorney, and assised in the same Court; and the said *A.* in Fact says, that he hath not been forejudged from the Office of an Attorney of this Court, and that he is impleaded by the original Writ aforesaid against his Will, and against the Custom aforesaid: And this he is ready to verify: Whereupon as the said *A.* is an Attorney of the said Court here, and on the Day of suing out the said original Writ, and long before, was an Attorney of the said Court here, he prays his Privilege aforesaid to be allowed and adjudged him, and that he may not answer the said original Writ for the Cause aforesaid, &c.

W. Chapple.

A De

A Declaration by a Clerk of the Crown-Office against another Clerk there, for two Guineas deposited on a Wager.

Middlesex, to wit. **R.** S. Gentleman, one *In B. R.*
By a Clerk of the Crown Office against another Clerk there.
Lilly 23.
2d Count, On Indeb. Assump. for 5l.
laying it by Way of Indeb. Assump. for 5l. had and received, which see before) Yet he the a-
 fore-

Officers.

foreſaid *H.* not regarding his ſaid Promiſes and Undertakings, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *R.* in this Particular, hath not hitherto paid the ſaid two Pieces of coined Gold, called Guineas, or the ſaid 5*l.* or any Part or Pareel thereof, to him the ſaid *R.* although he the ſaid *H.* was afterwards, to wit, on the 10th Day of *January* in the Year of the Lord 1731 aboveſaid, and oftentimes afterwards, at *W.* in the County aforeſaid, requested to do it by him the ſaid *R.* But he the ſaid *H.* hath hitherto wholly refused, and ſtill doth refuse to pay that to him, or in any Manner to content (ſatisfy) him for the ſame, to the Damage of the ſaid *R.* 20*l.* And thereupon, &c.

Vide poſt, againſt a Curſitor in the Petty Bag Office.

A Declaration againſt the High Bailiff of Weſtminſter, for a falſe Return of a Fieri Facias.

*In B.R.
For falſe Return of a Fieri Facias.
See Lilly 40.*

Middleſex, to wit. **R.** *A.* complains of *J. H. Eſq;* Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *St. Peter* at *Weſtminſter* in the ſaid County of *Middleſex*, in Cuſtody of the Maſhal, &c. for that, to wit, That whereas the ſame *R.* heretofore, to wit, in *Trinity Term* laſt paſt, in the Court of our ſaid Lord the King, before the King himſelf, the ſaid Court being then at *Weſtminſter* in the ſaid County of *M.* recovered by the Conſideration

sideration of the same Court against one *W. S.* of the Parish of *St. James Westminster* in the County of *M. Gentleman*, 55*l.* of Debt, and also 30*s.* for his Damages, which he had sustained, as well by Occasion of the detaining that Debt, as for his Charges and Costs laid out by him about his Suit in that Particular, whereof the said *W.* was convicted: And afterwards, to wit, on the 25th Day of *July* in the same Year, he the said *R.* for the obtaining Execution of the said Debt and Damages, prosecuted out of the same Court of our said Lord the King, before the King himself, the same Court then being also at *Westminster* in the said County of *Middlesex*, a certain Writ of our said Lord the King of *Fieri Facias*, directed to the Sheriff of the said County of *Middlesex*; by which said Writ our said Lord the King commanded the said Sheriff, That he should cause to be made of the Goods and Chattels of the said *W.* within his Bailiwick the said 55*l.* of Debt, and also the 30*s.* for the Damages aforesaid; And that he should have that Money before our said Lord the King at *Westminster*, on *Friday* next after three Weeks of *St. Michael* then next following, to render to him the said *R.* of the Debt and Damages aforesaid; which said Writ was afterwards, and before the Return thereof, to wit, on the 17th Day of *August*, &c. at the Parish of *St. Martin le Grand* in the said County of *Middlesex*, delivered unto *W. W. Knt.* and *J. B. Knt.* being the then Sheriff of the said County of *Middlesex*, to be executed in due Form of Law, which said Sheriff did then and there, to wit, on the same 17th Day

Officers.

That the
 Plaintiff had
 recovered 55*l.*

And sued out
 a Fieri Fa-
 cias.

And delivered
 it to the Sher-
 riff,

Officers.
Who sent his
Warrant to
the High Bai-
liff.

Mandavi
 Ballavo.

Day of *August* in the fifth Year aforesaid, in the Parish and County aforesaid, at the Request of the said R. make his Warrant in Writing, under the Seal of his said Office of Sheriff, of and upon the aforesaid Writ of *Fieri Facias*; and directed the same Warrant to the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *St. Peter* at *Westminster* in the County aforesaid; which said Bailiff of that Liberty then had, and yet hath the full Execution and Return of all Warrants, Writs and Mandates, within the same Liberty; by which said Warrant directed and delivered to the Bailiff, he the said Sheriff of the County aforesaid then and there by Virtue of the said Writ of the said Lord the King, so directed to the said Sheriff, commanded the said Bailiff of the said Liberty, That he should cause to be made of the Goods and Chattels of the said *W.* within the Bailiwick of him the said Bailiff, the said 55*l.* of Debt, which he the said R. had recovered against the said *W.* and also 30*s.* for the Damages of the said R. whereof he the said *W.* was convicted; so that he should have that Money before the said Lord the now King at *Westminster*, on the aforesaid *Friday* next after three Weeks of *St. Michael*, to render to the said R. of the Debt and Damages aforesaid; which said Warrant he the said R. afterwards and before the Return thereof, to wit, on the 18th Day of *August* in the fifth Year aforesaid, at *Westminster* aforesaid, delivered to the aforesaid *J. H.* then and yet Bailiff of the Liberty aforesaid, and then and yet

Officers.

Who levied the
Debt, &c.But to defraud
the Plaintiff
returned Nul-
la Bona.

Averment.

yet having the Execution and Return of all Precepts, Writs and Mandates, within the same Liberty, to be executed in due Form of Law: By Virtue of which said Warrant, he the said Bailiff of the said Liberty, afterwards and before the Return of the same Warrant, to wit, on the 20th Day of *August* in the fifth Year abovesaid, at the Parish abovesaid, and within his said Liberty, did cause to be made several Goods and Chattels of him the said *W.* to the Value of the Debt and Damages abovesaid; yet he the said *J. H.* being Bailiff of the Liberty abovesaid, did afterwards, at the Return of the said Writ, to wit, on the abovesaid *Friday* next after three Weeks of *St. Michael*, before the King himself, at *Westminster* abovesaid in the said County of *Middlesex*, falsely; deceitfully, and in Deceit of the said Court of our said Lord the King, before the King himself, and to defraud him the said *R.* of his said Debt and Damages, return to the said Sheriff of and upon the said Warrant, That the said *W.* had no Goods or Chattels within his Bailiwick, whereof he could make the said Debt and Damages, or any Parcel thereof, as he was commanded by the said Warrant; whereas in Truth and in Fact he the said *J. H.* as Bailiff of the said Liberty, had within the same Liberty, to wit, at the Parish abovesaid, in the County abovesaid, by Virtue of the said Warrant made as abovesaid, and directed and delivered to him the said *J. H.* as Bailiff of the same Liberty, made several Goods and Chattels, the Property of the said *W. S.* to the Value of the Debt and Damages abovesaid: Wherefore he the said *R.* saith,

T 4

That

Officers. That he is injured, and hath Damage to the Value of 60 l. And thereupon he brings, &c.

Declaration on an Action for a false Return to a Mandamus.

Plaintiff chosen Churchwarden.

Middlesex, to wit. J. S. complains of G. R. Doctor of Laws, Chancellor of the Diocese of *Peterborough* in the County of *Northampton*, and also Official of R. C. Clerk, Master of Arts, Arch-Deacon of the Arch-Deaconry of *Northampton*, in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, before the King himself; for that whereas before the Issuing the Writ hereafter mentioned, to wit, the seventh Day of *April* in the eighth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at the Parish of *All Saints* in the said County of *Northampton*, the said J. S. then and still one of the Inhabitants and Parishioners of the said Parish, was duly nominated and chosen by the Inhabitants and Parishioners of the said Parish, into the Place and Office of one of the Churchwardens of the said Parish, to serve in the said Place and Office for one whole Year then next following: And whereas the said J. S. ought by the said G. R. Chancellor and Official as aforesaid to be admitted and sworn into the said Place and Office of one of the Churchwardens of the said Parish, well and faithfully to execute the said Place and Office: And whereas the said J. S. after his said Nomination and Election did duly present and offer

Ought to be admitted and sworn by Defendant.

Defendant refused to admit and swear lain tiff.

fer himself to the said G. R. Chancellor and Official as aforesaid, to be so admitted and sworn; and the said G. R. Chancellor and Official as aforesaid, refused to admit and swear the said J. S. into the said Place and Office of one of the Churchwardens of the said Parish: And whereas the said J. S. for his Remedy in the said Premises, afterwards, to wit, on the 23d Day of *April* in the Eighth Year of the Reign of our said Sovereign Lord the present King, at *Westminster* in the County of *Middlesex*, prosecuted out of the Court of our said Lord the present King, before the King himself (the said Court being then at *Westminster* in the said County of *Middlesex*) a certain Writ of *Mandamus* of our said Lord the King, directed to the said G. R. by the Name of G. R. Doctor of Laws, Chancellor of the Diocese of *Peterborough* in the said County of *Northampton*, and to R. C. Clerk, Master of Arts, Archdeacon of the Archdeaconry of *Northampton* in the said County, and each of them, his or their Official or Surrogate, or any other competent Judge in that Behalf, by which said Writ our said Lord the King commanded them, by firmly injoining them, That immediately after the Receipt of that Writ, they should without Delay admit and swear the said J. S. or cause the said J. S. to be admitted and sworn into the said Place and Office of one of the Churchwardens of the said Parish, together with all the Liberties, Privileges and Commodities to the said Place and Office belonging and appertaining, or should signify to said Lord the King Cause to the contrary thereof, that the same Complaint might

Officers.



*False Return
thereto, that
Defendant
was not chosen
Churchwarden*

might not by their Default be repeated to our said Lord the King, and how they should execute that his said Majesty's Writ should make appear to our said Lord the King at *Westminster*, on *Wednesday* next after one Month from *Easter Day*, then returning to our said Lord the King that his said Writ, and that they were not to omit upon Peril what might fall thereon; which said Writ afterwards, and before the Return thereof, to wit, on the 25th Day of *April* in the eighth Year of his present Majesty's Reign, at the Parish aforesaid, was delivered to the said G. R. then until and at the Return of the said Writ, being Chancellor and Official as aforesaid, to be executed in due Form of Law: Nevertheless the said G. R. well knowing the Premises, but contriving and maliciously designing to injure and aggrieve the said J. S. did not at any time admit and swear the said J. S. or cause the said J. S. to be admitted and sworn into the said Place and Office of one of the Churchwardens of the said Parish; but at the Return of the said Writ, at *Westminster* in the said County of *Middlesex*, falsely and maliciously caused a certain Answer to the said Writ, to be returned to our said Lord the King, before the King himself (the said Court being then at *Westminster* aforesaid) therein certifying to our said Lord the King (among other Things) that the said J. S. in the said Writ of *Mandamus* named, was not nominated and chosen by the Inhabitants and Parishioners of the said Parish of *All Saints*, into the Place and Office of one of the Churchwardens of the said Parish, in the Manner and Form, as in and by the said Writ was suggested, as by the said Writ and Return

In Case.

283

Officers.

Return now remaining of Record in the said Court of the said Lord the King, before the King himself, may appear; whereas in Truth and Fact the said J. S. was nominated and chosen by the Inhabitants and Parishioners of the said Parish of *All Saints*, into the Place and Office of one of the Churchwardens of the said Parish, in Manner and Form as by the said Writ was suggested: And whereas in Fact the Matter of the Answer above particularly mentioned to be returned to the said Writ as aforesaid, was altogether false and contrary to Truth; by Reason of which the said J. S. could not enjoy the said Place and Office of one of the Churchwardens of the said Parish as he ought to have done, but lost all the Liberties, Privileges and Commodities to the said Place and Office belonging and appertaining: Wherefore he says that he is damnified to the Value of 500*l*. And therefore he bring Suit, &c.

Pledges to prosecute } *John Doe,*
 } *Richard Roe.*

A Declaration against a Chief Bailiff of the Dutchy Liberties on the Statute of 8 Ann. For the better Security of Rents, and preventing Frauds by Tenants.

Dorfolk, to wit. F. W. late of C. in the County aforesaid, Esq; was attached to answer to Sir R. Palgrave, Bart. Administrator of the Goods and Chattels, which were of the Lady Anne Palgrave, his late Mother, deceased, who died Intestate, &c. of a Plea of Trespas on the Case, and whereupon the said Sir R. by T. Hare his Attorney

*In C. B.
 Against a
 High Bailiff
 of the Dutchy
 on the Stat. 8
 Annæ, For
 better securing
 Rents, &c.*

Officers.

Recital of the
Clause in the
Statute. See
the Act.

A Lease at
Will.

Habend.

Attorney complains, That whereas in a Statute made in the Parliament of the Lady Anne, late Queen of Great Britain, &c. held at Westminster in the County of M. on the 8th Day of July in the eighth Year of the Reign of the said late Queen, it was among other Things, Enacted by Authority of the same Parliament, *That from and after the first Day of May, which should be in the Year of the Lord 1710. No Goods or Chattels whatsoever should be taken, &c.* (i. e. reciting the Clause, That no Goods, &c. are to be taken in Execution, unless the Plaintiff, before he remove, pay to the Landlord one Year's Rent) And if the Arrears of the Rent shall exceed one Year, then the Party, at whose Suit the Execution was, paying to the Landlord or his Bailiff the Rent of one Year, may proceed in the Execution of his Judgment as he might have done before the making of the said Act, and the Sheriff or other Officer have Power, and are required by the said Act to levy and pay to the Plaintiff, as well the Money so paid as aforesaid for Rent, as the Money upon the said Execution, as by the said Statute lately made and provided, it doth among other Things more fully appear; And whereas the said Lady A. P. after the making of the said Act, to wit, on the 16th Day of January 1712, had demised, and to Farm letten to one D. C. two Mesuages, and 120 Acres of Land, with the Appurtenances, lying and being in N. T. and B. in the said County of N. To have and to occupy to the said D. and his Assigns from the Feast of St. Michael the Archangel then last past to the End and Term of one whole Year from thence next following, and fully

fully to be compleat and ended, and so from Year to Year, as long as it should please both Parties; rendering therefore yearly, as long as he the said *D.* should have or occupy the said two Mesuages, and 120 Acres of Land (with the Appurtenances) unto the said Lady *A. P.* her Heirs and Assigns the Rent or Sum of 70*l.* of lawful Money of *Great Britain*, to be paid at the Feasts, &c. by equal Portions. By Virtue of which said Demise he the said *D.* entred into the said two Mesuages, &c. with the Appurtenances, and was thereof possessed, and occupied the same for the Space of two Years, and 70*l.* of the said Rent, being the Rent for one Year of the said Premises, was due, and in Arrear, and unpaid to the said Lady *A. P.* at the Feast of *St. Michael* the Archangel in the Year of the Lord 1713. And whereas the said *F. W.* afterwards, to wit, on the 6th Day of *October* in the 12th Year of the Reign of the said Lady *Anne* late Queen of *Great Britain*, at *N.* aforesaid, he the said *F. W.* being then and still Chief Bailiff of the Dutchy of *Lancaster* in the County aforesaid, by Virtue and Pretence of a certain Writ of *Fieri Facias* of the Goods and Chattels of him the said *D.* prosecuted at the Suit of one *E. B.* out of the Court of the said late Queen of the Bench, (the same Court being then at *Westminster* in the County of *Middlesex*) against the said *D.* upon a Judgment, before that Time had and obtained against him the said *D.* in the same Court of the Bench, and then directed to the Sheriff of the said County of *Norfolk*, and by Virtue of a Warrant in Writing by the said Sheriff sealed with his Seal, and

Reddend.

Entry of the
Tenant, and
occupying for
two Years and
one Year's Rent
Arrear.

And the Defen-
dant by Virtue
of a Warrant
on a Fi. Fa.
took the Goods
of the Tenants
on the Pre-
misses, to 200*l.*
Value.

Officers.

and directed to the said *F. W.* he the said *F.* afterwards, to wit, on the 6th Day of *October* in the Year aforesaid, at *N.* aforesaid, and within the Liberty aforesaid, he the same *Francis* being then Chief Bailiff as aforesaid, took the Goods and Chattels of the said *D. C.* being then in and upon the Mesuages and Lands aforesaid, to the Value of 200 *l.* and the said *R. P.* further saith, That after the taking, and before the Removal of the said Goods and Chattels by Pretence of the said Warrant, to wit, the same Day, Year and Place last mentioned (at *N.* aforesaid) she the said Lady *A. P.* in her Life, gave to the said *F.* Notice of the said Rent so due to her as aforesaid, and she the said Lady *Anne* then and there demanded of the said *F.* the Rent aforesaid, according to the Form of the Statute aforesaid, out of the said Goods and Chattels (so taken by the said *F.* in Execution as aforesaid :) But the said *F.* then and there refused to pay the said Rent, and so he the said *F.* not regarding the Statute aforesaid, nor any Way fearing the Penalty therein contained, but contriving and fraudulently intending the said *A.* in her Life-time, and the said *R.* since her Death, craftily and subtilly to deceive and defraud in this Particular, hath not paid, or any way satisfied the said 70 *l.* for the said Rent, for one whole Year, ended at the said Feast of *St. Michael* the Archangel in the Year of our Lord 1713 aforesaid, so being in Arrear, and unpaid to the said *A.* as aforesaid, although he was on the same Day and Year, and often afterwards, at — aforesaid, thereto requested by the said *A.* But the

Notice.**Demand.****And Refusal.****Breach of the Statute.**

the said Goods and Chattels so as aforesaid taken by the said *F.* by Pretence of the said Warrant as aforesaid, he the said *F.* afterwards, to wit, on the said sixth Day of October in the Twelfth Year aforesaid, did take, carry away, and remove off and from the Messuages and Lands aforesaid, against the Form of the said Statute in that Case made and provided, the said 70*l.* for the one Year's Rent aforesaid, being then due and unpaid as aforesaid, and the same or any Part thereof in no wise satisfied: And he the said *R.* further saith, That he the said *F.* hath not paid the said Rent to the said *A.* in her Life-time nor since her Death to the said *R.* to whom the Administration of all and singular the Goods and Chattels, Rights and Credits, which were of her the said *A.* at the Time of her Death, to wit, on the 11th Day of June in the Year of our Lord 1716, at *N.* aforesaid, was after the Death of the said *A.* committed in due Form of Law, by *T. S.* Professor of Divinity, Official lawfully constituted of the Lord Charles Bishop of Norwich. But the said 70*l.* he the said *F.* wholly refused to pay or satisfy the same to the said *A.* in her Life-time, and still doth refuse to pay or satisfy the same to the said *R.* to the Damage of him *R.* 100*l.* And thereupon he brings this Suit, &c. And he also brings here into Court the said Letters of Administration, which testify the Committing of the said Administration unto him the said *R.* in the Form aforesaid.

Administration granted to the Plaintiff

Profert of the Letters of Administration.

A De-

A Declaration against a Sheriff for not arresting the Party on Mesne Process.

In B. R.
Against a Sher-
riff for not ar-
resting on
Mesne Pro-
cess, &c. See
Lilly 60.

That one J. W.
was indebted
to the Plain-
tiff.

Who sued out
an Alias Ca-
pias.

Suffer, to wit. **D.** T. Widow, complains of *F. T.* Esq; late Sheriff of the County aforesaid, being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, for that, to wit, That whereas one *J. W.* on the 10th Day of *May* in the 5th Year of the Reign of, &c. at *P.* in the County aforesaid, was indebted to the said *D.* in 200*l.* of lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes, by her the said *D.* unto the said *J.* at the Special Instance and Request of the said *J.* before that Time sold and delivered, and the aforesaid *J.* being so indebted then and there in Consideration thereof undertook, and unto the said *D.* then and there faithfully promised, That he the said *J.* would well and faithfully pay and satisfy the said 200*l.* unto the said *D.* when he should be thereto afterwards required: And in Fact, she the said *D.* saith, That the said *J.* though he was afterwards often required to do it, hath not yet paid the said 200*l.* to the said *D.* but hath wholly refused to pay it to her: And also whereas she the aforesaid *D.* for Recovery of the said 200*l.* so due and unpaid by the said *J.* to the said *D.* as aforesaid, did afterwards, to wit, in *Hilary* Term in the sixth Year of, &c. at *Westminster* in the County of *Middlesex*, prosecute a certain Writ of our said Lord the now King of *Alias Capias*, directed to the said *F.* then Sheriff of the

the said County of *S.* and issuing out of the Court of our said Lord the now King, before the King himself, the same Court then being at *Westminster* in the said County of *Middlesex*, by which said Writ of *Alias Capias* our said Lord the now King, commanded the said Sheriff of *S.* as it had been before commanded to the said then Sheriff of *S.* that he should take the said *J. W.* if he might be found in his Bailiwick, and keep him safely, so that he should have his Body before our said Lord the King at *Westminster*, on *Wednesday* next after fifteen Days of *Easter* then next following, to answer to the said *D.* of a Plea of *Trespas*s, and also to a Bill of her the said *D.* against him the said *J. W.* for 200*l.* upon Promise, according to the Custom of the Court of our said Lord the now King, before the King himself to be exhibited, and that the said Sheriff should have then there that Writ, which said Writ of our said Lord the King of *Alias Capias* she the same *Dorothy* afterwards, and before the Return thereof, to wit, on the 9th Day of *April* in the 6th Year of the Reign of our said Lord the now King, at *P.* aforesaid in the said County of *S.* delivered to the said *F. P.* being then Sheriff of the County of *S.* to be executed in due Form of Law, which said Writ of *Alias Capias*, so prosecuted in the Form aforesaid, she the said *D.* prosecuted with Intent that he the said *J. W.* should by Virtue of the same Writ be taken and arrested, and that the aforesaid *F. P.* the said Sheriff of the County aforesaid, should have the Body of the said *J.* before the Lord the now King at *Westminster*, so that at the

And delivered
it to the Sheriff.

Note.

Officers.

~ said Day of the Return of the same Writ he the said *J.* might be committed to the Marshal of the *Marshalsea* of our said Lord the now King, before the King himself, according to the Custom of the said Court; and so that the said *J.* before he should be at large out of such Custody might be compelled to put in two sufficient Bail, at the Suit of the said *D.* to the Bill of the aforesaid *D.* against him the said *J.* for the said 200*l.* upon the Promise above-mentioned, according to the Custom of the same Court, before the King himself to be exhibited: And whereas afterwards, and before the Return of the said Writ of *Alias Capias*, to wit, on the said 9th Day of *April* in the sixth Year aforesaid, at *P.* aforesaid in the said County of *S.* he the said *J.* was in the Presence of the said *F.* the said *F.* being then Sheriff of the same County of *S.* and she the aforesaid *D.* did then and there shew the said *J. W.* unto him the said *F.* and then and there requested the said *F.* to take and arrest him the said *J.* according to the Command of the said Writ; yet he the said *F.* not regarding his Office of Sheriff in the true and just Execution thereof, but contriving and fraudulently intending to deprive her of her proper Remedy for Recovery of the said 200*l.* Debt at the Day, Year and Place aforesaid, did not take and arrest him the said *J.* nor had his Body before the said Lord the now King, at *Westminster*, at the said Day of the Return of the said Writ of *Alias Capias*, nor at any Time afterwards, or before the said Return; but upon the said *Wednesday* next after fifteen Days of *Easter* above-mentioned, at *Westminster*

And required him to arrest the Party (being in his Presence.)

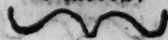
Which the Sheriff neglected, &c.

And had not the Body at the Return.

In Case.

291

Officers.



minster aforesaid in the said County of *Mid-*
dlesex, did voluntarily and fraudulently neg-
lect to have the Body of him the said *J.*
there, according to the Command of the said
Writ of *Alias Capias*, although he the said
F. might most easily have had the Body of
the said *J.* there at that Day, and according
to the Duty of his Office of Sheriff of the
County aforesaid, whereby he the said *J.*
was not committed to the said Marshal of the
Marshalsea, nor put in any Bail at the Suit
of the said *D.* so that the said *D.* could not
exhibit her Bill against him the said *J.* for
the said 200*l.* upon the said Promise and
Undertaking in the said Court of our Lord
the now King, before the King himself, ac-
cording to the Custom of the same Court:
And he the said *J.* immediately after the
said Day of the Return of the said Writ,
escaped, and hid and absconded, and always
afterwards hitherto hath hid and absconded,
and eligned himself, and escaped into Places
altogether unknown to the said *D.* so that she
the said *D.* is thereby wholly hindered and
defrauded of her Remedy for the Recovery
of the aforesaid 200*l.* to the Damage of her
the said *D.* 200*l.* &c.

And so the De-
pendant esca-
ped, &c.

Quære what
Return the
Sheriff made
to the Writ.

Note; In this Case on Not guilty pleaded,
the Plaintiff had a Verdict, and recovered all
her Debt, &c. which was paid her by the She-
riff accordingly.

Sheriffs.

A Declaration against a Sheriff for not taking sufficient Bail in a Replevin.

In B. R.
Against a Sher-
riff not taking
sufficient Bail
in Replevin.
See Lilly's
Entr. 37.

The Plaintiff
possessed of
Goods in Mid-
dlesex.

Middlesex, to wit. J. S. of, &c. Esq; com-
plains of Sir S. G.
Baronet, and Sir R. B. Knt. late Sheriff of
the said County of *Middlesex*, being in the
Custody of the Marshal, &c. for that, to
wit, That whereas he the said J. on the 19th
Day of *October* in the Year of the Lord
1730, at the Parish of *St. Clement Danes* in
the said County of *Middlesex*, was possessed
of one Bed, one Bedstead, one Pillow, six
Curtains, six Vallance, &c. (reciting all the
Goods particularly) as his own proper Goods
and Chattels: And also whereas they the
said S. and R. the same Day and Year, and
long before and afterwards, were Sheriff of
the same County of *Middlesex*, and the said
J. being then and there so possessed of the
same Goods and Chattels in the Form afore-
said, and they the said S. and R. being, so as
aforesaid, Sheriff of the said County not re-
garding the Duty of their said Office, but
contriving and fraudulently intending to de-
ceive and defraud the said J. of his said
Goods and Chattels, on the same Day and
Year abovesaid, in the said Parish of *St. Cle-
ment Danes* in the said County of *Middlesex*,
by Colour of their said Office, the said Goods
and Chattels being then and there found,
did at the Plaint of one *W. P.* pretending the
same Goods to be the proper Goods and
Chattels of the said *W. P.* and unto the same
W. P. of Right to belong and appertain, and
that

Sheriffs.

that he the said *J.* had unjustly taken and detained the same Goods and Chattels, against Gages and Pledges; caused the said Goods and Chattels to be replevied from the Possession of the said *J. S.* and caused and procured the same Goods and Chattels to be delivered to the said *W. P.* without sufficient Gages and Pledges, or any other sufficient Security had or taken for prosecuting the said Complaint of him the said *W. P.* against the said *J. S.* for the taking and unjust detaining of the said Goods and Chattels, and for making a Return of the same Goods and Chattels to the said *J. S.* if the Return of them should be adjudged to the said *J. S.* as by the Law and Custom of *England*, and the Duty of his said Office he ought to have done; which said Complaint was afterwards by due Process of Law removed into the Court of our said Lord the now King, before the King himself, *where-*

The Defen-
dants being
Sheriff on a
pretended
Plaint by a
third Person
delivered them
to him sans
sufficient Sure-
ties.

soever he should be in England: And also *Removal of*
whereas afterwards, to wit, in Easter Term the Complaint into
in the — Year, &c. he the said J. S. was B. R.

thereupon summoned into the Court of our said Lord the now King, before the King himself, at *Westminster*, to answer to the said *W. P.* of a Plea, why he took the said Goods and Chattels, and thereupon there was such a Proceeding, that it was considered by the same Court at *Westminster*, That the said *J. S.* should have a Return of the said Goods and Chatels to be *detained by him irre-*
plevisable for ever; which said Judgment *Declaration*
there, and
Judgment for
a Return irre-
plevisable. Th
as yet remains and exists in its full Strength Goods eloigned
and Force, no way revoked or annulled; and that the Goods and Chattels afore-
said, which by Occasion of the said Re-

Sheriffs.

plevin were delivered to the said *W. P.* (by the said Sheriff) as aforesaid, are eloigned to strange and unknown Places; so that they cannot be returned or delivered unto him the said *J.* and the aforesaid *J.* by that Occasion hath wholly lost and is (intirely) deprived of his said Goods without Remedy; to the Damage of him the said *J.* 200 l. &c.

See other Declarations, &c. for and against Sheriffs, viz.

By Sheriffs.

{ For Escapes. Instit. Leg.
274 to 401. 439, &c.
For Rescues. Ibid. 395 to
401. 175, 314, &c.

Against Sheriffs.

{ For not arresting. Ibid. 49
to 51.
Permitting Escapes. Ibid.
438.
For False Returns, &c.
Ibid. 305, &c.

A Declaration against a Bailiff, for refusing good Bail when tender'd.

*In C. B.
Against a Bai-
liff for refus-
ing Bail.*

*See Lilly 71.
On the Stat.
23 H. 6. c. 10.*

Essex, to wit. *J. M.* late of *C.* in the said County, Yeoman, was attached to answer to *T. P.* of a Plea of Trespas on the Case; and whereupon he the said *T.* by *J. P.* his Attorney, complains, That whereas by a certain Act made in a Parliament of the Lord *Henry* the Sixth, late King of *England*, held at *Westminster* in the County of *Middlesex*, on the 25th Day of *February* in the 23d Year of his Reign, it was a-

among other Things enacted, by Authority of the same Parliament, *That Sheriffs and Under-Sheriffs, and their Clerks, Coroners and Stewards, or Bailiffs of Franchises, Sergeants, Bailiffs and Keepers of Prisons, shall let out of Prison all Manner of Persons, by them or any of them arrested, or being in their Custody by Force of any Writ, Bill, or Warrant, in any Action Personal (Q. if not mixt and real) or by Cause of Indictment, by Trespass, upon reasonable Sureties of sufficient Persons, having sufficient within the Counties where such Persons be let to Bail or Mainprise, to keep their Days in such Place as the said Writs, Bills, or Warrants shall require, (Note, the Statute excepts such as are in Custody by Condemnation, Execution, Capias Utlegat. or Excommunication, Surety of the Peace, and such as are committed by the special Commandment of any Justices, and also Vagabonds refusing to serve according to the Statute of Labourers,) as by the said Statute may among other Things more fully and certainly appear. After the publishing of which said Act, to wit, on the 22d Day of June in the sixth Year of the Reign of our Sovereign Lord George the Second now King of Great Britain, &c. one T. H. the Elder, prosecuted out of the Court of our said Lord the King of the Bench here, to wit, at Westminster, a certain Writ of our said Lord the King of Capias to answer to the said T. and other Persons named in the said Writ, directed to the then Sheriff of the said County of E. by which said Writ our said Lord the King commanded the said Sheriff, That he should take the said T. and the other Persons, if they should be found in his Bailiwick,*

A Capias sued out of C. B.

Bailiffs.

*For Trespass
in taking Oy-
sters.*

*And delivered
to the Sheriff.*

*The Sheriff's
Warrant to
the Bailiff of
the Hundred.*

liwick, and keep them safely, so that he might have their Bodies before the Justices of the said Lord the King of the Bench at *Westminster* aforesaid, on the Octave of *St. Martin* then next following, to answer to the aforesaid *T. H.* of a Plea, that with Force and Arms he had taken and carried away 20 Bushels of the Oysters of him *T.* of the Value of 20*l.* at the Parish of *W.* and *L.* aforesaid, there lately found; and other Enormities had done to him, to the great Damage of him *T.* against the Peace of the said Lord the now King: And that the said Sheriff should then have there that Writ, which said Writ he the said *T.* afterwards and before the Return thereof, to wit, on the same 16th Day of *August* in the said sixth Year of the Reign of our said Lord, now King, at *H.* in the said County of *E.* delivered to one *W. P.* Esq; the then Sheriff of the said County, to be executed in Form of Law; which said Sheriff for the Execution of the said Writ, did afterwards, to wit, on the same 16th Day of *August* in the said sixth Year, at *H.* aforesaid, make his certain Warrant in Writing, sealed with the Seal of his Office of Sheriff of the said County of *S.* directed unto the Bailiffs of the Hundreds of *L. T. W.* and *R.* By which said Warrant he the said Sheriff commanded the said Bailiffs of the said Hundreds, that they should take the same *T.* and the said other Persons, if they could be found, &c. and keep them safely, so that he had their Bodies before the Justices of the said Lord the now King of the said Bench at *Westminster* aforesaid, to answer in the Form aforesaid; which said Warrant afterwards

terwards and before the Return of the same, to wit, on the — Day of *August* in the sixth Year aforesaid, to wit, at *H.* aforesaid, was delivered to the said *J.* he being then and continually from the Time of the making of the said Warrant, to the Time of the Return of the same, Bailiff of the said Hundred of *W.* to be executed by him in due Form of Law: By Virtue of which said Warrant, he the said *J.* being Bailiff of the said Hundred of *W.* as aforesaid, afterwards and before the Return of the same Writ, to wit, on the first Day of *September* in the sixth Year of the Reign of our Lord the now King aforesaid, at *H.* aforesaid, did take and arrest him the said *T.* And he the said *T.* in Fact saith, That immediately after the said taking and arresting of him the said *T.* he the said *T.* did offer to the said *J.* reasonable Pledges and Sureties of sufficient Persons, to wit, *John Doe*, of, *Esc.* in the County aforesaid, Gentleman, and *Richard Jones* of, *Esc.* in the same County, Gentleman, then and yet being sufficient Persons, and having, and each of them then and still having sufficient within the same County for securing of his the said *T.*'s Appearance, according to the Demand of the said Writ, according to the Form of the Statute: Yet he the said *J.* not regarding the said Statute, but contriving and maliciously intending unjustly to grieve and oppress the said *T.* in this Particular, did then and there altogether refuse to accept of his said Sureties, and without Delay carried him the said *T.* to the common Gaol of our said Lord the now King for the County aforesaid, at *Chelmsford*,

Averment of Bail tender'd.

Their Names.

But the Bailiff refused them, and carried him to Gaol.

Bailiffs. *ford,* and detained him there in the same Gaol a Prisoner under the Custody of the said *W. P.* the then Sheriff of the County afore said, until he had paid a Fine of 40*s.* to the said *J.* against the Form of the Statute afore said: Wherefore he saith, That he is injured, and hath Damage to the Value of 40*l.* &c.

For other Actions, &c. by and against Attorneys, Clerks, &c. see before, Page 264, &c. and hereafter Title Debt, &c. See also Instit. Leg. 23, &c. 306, &c. 438, &c.

*The Entry of a Declaration, Issue,
and Nisi Prius Record, in an Ac-
tion against a Cursitor, brought
in the Petty-Bag Office in Chan-
cery.*

*Pleas before our Lord the now King in
his Chancery at Westminster in the
County of Middlesex, in Michaelmas
Term in the sixth Year of the Reign
of our Sovereign Lord George the Se-
cond, by the Grace of God, of Great
Britain, France and Ireland King,
Defender of the Faith, &c.*

London, to wit. **R.** T. by *W. Smith, Esq;* *In Chancery in
his Attorney, com- the Petty-Bag
plaints against J. T. Esq; one of the Cursitors Office, against
of the Court of Chancery of our Lord the a Cursitor.*
now King present here in Court in his pro- *See Lilly 88.
per Person; for that, to wit, That whereas Ind. Assump.
he the said J. on the 17th Day of October For Goods and
in the sixth Year of the Reign of our Sove- Wares sold.*
reign Lord George the Second, now King of
Great Britain, &c. at London aforesaid, to
wit, in the Parish of St. Mary le Bow in the
Ward of Cheap, was indebted to the said R.
in 35 *l.* of lawful Money of Great Britain, as
well for divers Goods, Wares and Merchan-
dizes of him the said R. by him the said R.
at the special Instance and Request of him *And for Work
and Labour
done.*
the said J. before that Time sold and deli-
vered,

Petty-Bag. vered, as for Work and Labour (shewing what) by him the said R. for the said J. at the like special Instance and Request of him J. before that Time done and performed: And being so indebted he the said J. afterwards, to wit, on the same Day and Year, at *London* aforesaid in the Parish and Ward aforesaid, undertook for himself, and unto the said R. then and there faithfully promised, that he the said J. would well and faithfully pay and satisfy the said 3*5*l. unto the said R. when he should be afterwards

Quant. val.

thereto required, [another Count by Way of *Quantum valebant* for the like Goods and Labour, with the usual Averments; *the Form whereof see before*] Yet he the said J. S. contriving, &c. then refused, and still refuses to pay, &c. to the Damage of him R. 100*l*. And thereupon he prays Relief, &c. Pledges of Prosecution are *John Doe*, and *Rich. Roe*:

Imparlane.

Whereupon a Day is given by the Court here to the said J. until *Monday* next after one Month of *St. Michael* in this same Term, to make his Answer to the said Bill of him the said R. and the same Day is given to the said R. to be here, &c. At which Day before our said Lord the now King, in his said Chancery, to wit, at *Westminster* aforesaid, came as well the said R. by his Attorney aforesaid, as the aforesaid J. in his proper Person; and the said R. prays that the said J. may answer to his Bill aforesaid: And the aforesaid J. in his proper Person comes and defends the Force and Injury, when, &c. and saith, That he did not undertake in Manner and Form, as the said R. doth above complain against him: And of this he puts himself

Plea of Non Assump.

himself upon the Country; and the said R. likewise, &c. And thereupon he the said R. prays a Writ of our said Lord the now King, of *Venire Facias* to be directed to the said Sheriffs of *London*, to try the aforesaid Issue between the said Parties, joined in the Form aforesaid; and it is granted to him by the said Court here, &c. (*Returnable in the Court of the said Lord the now King, before the King himself*) The same Day is given to the Parties aforesaid, to be before the said now Lord the King, until the *Monday* next after the *Octave* of *St. Hilary* next coming, whereforever he shall then be in *England*, to do and receive what shall be just in the Premisses: And it is commanded to the Sheriffs of *London* aforesaid, That he shall cause to come before the said Lord the now King, at that Day twelve free and lawful Men of the City of *London* aforesaid; each of which hath 10 l. in Lands, Tenements, or Hereditaments, by the Year at the least; and by whom the Truth of the Matter (in Question) may better be known, and who are by no Affinity related to either the said R. or the said J. to recognize more fully by their Oath the Truth of and concerning the said Premisses.

Petty-Bag.

A Venire awarded, and Day given to the Parties, in B. R.

Quære, If not Middlesex.
Note.

For other Proceedings in the Petty-Bag, see Curs. Canc. 419, 490 to 502.

Pleas

Petty-Bag.

Pleas before our Lord the King at Westminster, of the Term of St. Hilary in the sixth Year of the Reign of the Lord George the Second, now King of Great Britain, &c.

The Nisi Prius Record thereupon. See Lilly 89.

Middlesex, to wit. **B**E it remember'd, that *Peter Lord King, Baron of O. and Lord Chancellor of Great Britain, on Monday next after the Octave of St. Hilary in this same Term, before the Lord the King at Westminster, did with his own proper Hands deliver here in the Court of the said Lord the King a certain Record had before the said Lord the King in his Chancery at Westminster in the County of Middlesex, in these Words, to wit, Pleas before our Lord the now King in his Chancery, at Westminster in the County of Middlesex, in the sixth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c.*

London, to wit. **R**T. by *W. Smith* his Attorney, complains against *J. S. (&c. reciting the whole Issue, &c. verbatim, as before, to the Word Premisses)* At which Day before the Lord the King, at Westminster, came as well the said *R. T.* by *J. S.* his Attorney, as the said *J. S.* in his proper Person, and the Sheriffs of London aforesaid, to wit, *F. G. Knt. and L. M. Esq;* returned the Writ of our said Lord the King of *Venire Facias*, directed to them in the Form

Venire.

Form aforesaid, in all Things served and executed, together with a Panel of the Jurors Names annexed to the same Writ, none of whom do appear. Therefore it is commanded to the said Sheriffs of *London*, That he distrein the Jurors aforesaid by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the Lord the King, at *Westminster*, on *Monday* next after the Octave of the *Purification* of the blessed Virgin *Mary*, or before Sir *F. P. Knt.* one of the Justices of the Lord the King, assigned to hold Pleas in the Court of the Lord the King, before the King himself, if before, on *Saturday* next after the said *Purification* of the blessed Virgin *Mary*, he shall come at the *Guildhall*, *London*, for Default of the Jurors by Form of the Statute; therefore let the Sheriffs have their Bodies, &c. The same Day is given to the Parties aforesaid at the same Place. Afterwards at the Day and Place within contained, before *F. P. Knt.* the Justice of our Lord the King within written, there being associated unto him *J. T. Gentleman*, by Form of the Statute, came the within named *R. T.* by his Attorney within contained: And the within written *J. S.* although at the same Day he was solemnly demanded, did not come, but made Default. Therefore let the Jury, whereof Mention is within made, be taken against him by Default. And the Jurors of the Jury whereof Mention is within made, being demanded, came (*i. e.* did appear) and being elected, try'd and sworn to say the Truth of and concerning the Matter in Issue within contained, do say upon their Oath, That the

Petty-Bag.

And Distrained.

The Postea.
See before.

Note.

Chancery. the within named *J. S.* did undertake in Manner and Form, as the said *R. T.* doth within declare against him; and they do assess the Damages of him *R. T.* by Occasion of the not performing of that Undertaking, besides his Charges and Costs laid out by him about his Suit in this Particular, to 34 *l.* 10 *s.* 11 *d.* and for those Charges and Costs to 53 *s.* 4 *d.* Therefore, &c.

18 Feb. 1732.	<i>l.</i>	<i>s.</i>	<i>d.</i>
For Costs of Increase	11	5	9.
For Damages in the Whole	18	10	0.

See the Form of the Venire and Distringas in this Case, Lilly's Entr. 90.

A Declaration on an Issue directed out of Chancery, being against one of the Clerks of the chief Clerk in B. R. to settle a Difference between an Executor and a Donee, concerning Tallies, &c.

In B. R. London, to wit. **W** B. Gentleman, Executor of the Testament and Last Will of *V. B.* Esq; deceased, complains of *H. W.* Gentleman, one of the Clerks of *Edward Ventris*, Esq; Chief Clerk of our Lord the King, assigned to inroll Pleas in the Court of the said Lord the King, before the King himself, according to the Liberties and Privileges of such Chief Clerk and his Clerks, used and approved in the same Court from the Time whereof the Memory of Man is not to the contrary, being present here in Court in his proper Person; for

On an Issue out of Chancery.
A Declaration against a Clerk of B. R.

for that, to wit, That whereas the said *V. B.* now deceased, was in his Life-time, to wit, on, &c. at *London* aforesaid, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, possessed of seven Tallies, and seven Orders in Writing, made at the Exchequer of our said Lord the now King, at *Westminster*, &c. and to the same Tallies belonging and appertaining as of his own proper Tallies and Orders. Two of those Orders being respectively number'd with the Numbers 155 and 156, and made at the said Exchequer, in Pursuance of a certain Act of Parliament, intituled, *An Act for granting an Aid to his Majesty, by continuing the Duties upon Malt, Mum, Cyder and Perry, for one Year, &c.* and both of them bearing Date the 26th Day of *January* in the Year of the Lord 1730. And of five Orders, being the Residue of the said Orders, number'd with the respective Numbers following, to wit, 1006, 1007, 1008, 1009, 1010, and made at the Exchequer aforesaid, in Pursuance of a certain Act of Parliament, intituled, *An Act for granting to his Majesty a Land-Tax be raised in the Year 1731.* Each of the said five Orders last mentioned, bearing Date (at *Westminster*) the 23d Day of *December* 1731. And that by Reason of the said Tallies, and the Orders in Writing made thereupon, there was due and owing to the said Testator, or his Assignees, the Sum of 3100*l.* Principal Money, which said Tallies and Orders (on such a Day, &c.) at *London* aforesaid, in the Parish and Ward aforesaid, came to the Hands and Possession of the said *H.* And whereas after the Death of the said Testator,

Chancery. tator, to wit, on the first Day of *October* in the third Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, a certain *Colloquium* (Discourse) was had and moved between the said *W. B.* the Executor, and the said *H.* of and concerning the said Tallies and Orders, and the said Possession of the said *H.* thereupon (thereof:) And upon that Discourse he the said *H.* did then and there affirm, That the said Tallies and Orders were delivered, and that each (every) of them was delivered by the said *V. B.* the Testator, unto him the said *H.* by Way of Gift of the Principal Money due on the same Tallies and Orders to the proper Use and Benefit of the said *H.* Yet the Interest for the same Principal Money was to be paid to the said *W.* the Testator, during his Life; which said Affirmation he the said *W.* the Executor, then and there denied: And thereupon he the said *W.* the Executor, at the Instance of the said *H.* paid to the said *H.* 20 s. and in Consideration thereof he the said *H.* undertook, and unto the same *W.* the Executor, then and there faithfully promised to pay to him the said *W.* 40 s. if the Tallies and Orders aforesaid, were not deliver'd; and each of them was not delivered by the aforesaid *V.* the Testator, unto the said *H.* by Way of Gift of the Principal Money due upon those Tallies and Orders, to the proper Use and Benefit of him the said *H.* as aforesaid: And the said *W.* the Executor in Fact saith, That the Tallies and Orders aforesaid were not deliver'd, and each of them was not deliver'd by

Averment.

by the aforesaid *V.* the Testator, to the said *H.* by Way of Gift of the Principal Money due upon the same Tallies and Orders, to the proper Use and Benefit of him the said *H.* as he the said *H.* hath above alledged: Yet he the said *H.* not regarding his Promises and Undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* the Executor in this Particular, hath not paid the said 40*s.* nor any Penny thereof, to the said *W.* although he the said *H.* was afterwards, to wit, on the fifth Day of *October* in the fourth Year aforesaid in the Parish and Ward aforesaid, by the said *W.* required to do it; but hitherto hath wholly refused, and yet doth refuse to pay the same to him, to the Damage of him *W.* 10*l.* And thereupon he brings his Suit, &c.

Chancery.

And the aforesaid *H.* in his proper Person comes and defends the Force and Injury, when, &c. and saith, That the aforesaid *W.* (the Executor) ought not to have or maintain his Action aforesaid against him, because he saith, That well and true it is, that he the said *H.* was possessed of the Tallies and Orders aforesaid, and did undertake in Manner and Form, as he the said *W.* by his Declaration aforesaid, hath above supposed; but he the said *H.* further saith, That the Tallies and Orders aforesaid were delivered, and each of them was delivered, by the aforesaid *V.* the Testator, to him the said *H.* by Way of Gift of the said Principal Money, due on the same Tallies and Orders to the proper Use and Benefit of the said *H.* altho'

The Plea
thereto.Confession and
Avoidance.

Chancery. the Interest for the said Principal Money due upon the same Tallies and Orders, was to be paid to the same *V.* the Testator, during his Life, as the said *H.* hath above affirmed, to wit, at *London* aforesaid, in the Parish and Ward aforesaid: And hereof he puts himself upon the Country; and the said *W.* doth so likewise, &c. Therefore let a Jury thereupon come before our Lord the King at *Westminster*, on *Wednesday* next after three Weeks of the Holy Trinity, and who are no ways related either, (*&c. as usual in awarding the Venire.*)

See Lilly's Ent. pag. 66. another Declaration on an Issue directed out of Chancery, concerning Exceptions to an Account about a Partnership.

DECLARATIONS and PLEADINGS in Ac- tions of Account.

These Declarations in Actions of Account are chiefly against Bailiffs, or Receivers or Guardians, i. e. such as receive Money in Trust for others; the Intent of the Action being to compel them to render an Account of such Moneys to him, for whose Use they received it; according to the following Forms.

A Declaration in Account by Executors against a (Bailiff or) Receiver, to the Testator.

Middlesex, to wit. **T** J. and F. G. Execu- In B. R.
By Executors
against a Re-
ceiver of the
Testator.
tors of the Last Will and Testament of T. J. the Elder, deceased, complain of L. H. Merchant, being in the Custody of the Marshal of the Marshalsea of our Lord the King, before the King himself, of a Plea, That he render to them a reasonable Account from the Time that he was the Bailiff of the said T. J. the Elder, and Receiver of the Monies of the said T. in his Life-time, to wit, at Westminster

Receivers. *ster* in the County aforesaid; for that, to wit, That whereas he the aforesaid *L.* on the 10th Day of *May* in the first Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. until the 30th Day of *September* in the second Year of his said Majesty's Reign, had at *Westminster* in the County aforesaid been the Bailiff of him *T. J.* the Testator, in his Life, and for that whole Time had had the Care and Disposition of divers Goods and Chattels of the said *T. J.* the Elder, to wit, of 200,000 *lb.* of Tin, 30 Firkins of Stub-Nails, 224 *lb.* of mixt Metal, call'd *Speker*, 40,000 *lb.* of Lead, and 500 *lb.* of other mixt Metal, called *Tume Glass*, to the Value of 3000 *l.* to wit, at *Westminster* aforesaid, in the County aforesaid, to make Merchandize and Profit thereof for him the said *T. J.* the Elder, and to render a reasonable Account thereof to him the said *T.* the Testator, when he should be thereto required, as (Bailiff) Receiver of the Monies of him the said *T. J.* during the whole Time aforesaid: And whereas he the said *L. H.* during the said Time had received of the Monies of him *T. J.* the Testator, at *Westminster* aforesaid, by the Hands of *P. P.* 113 *l.* 5 *s.* and there also by the Hands of *P. C.* 9 *l.* and there also by the proper Hands of him the said *L. H.* 960 *l.* of lawful Money of *Great Britain*, to render a reasonable Account of the same to the same *T.* the Testator, when he should be thereto required: Yet he the said *L. H.* tho' thereto often required, to wit, on, &c. at *Westminster* aforesaid, hath not rendered to the said *T. J.* the Elder in his Life-time, or to the said *T. J.* the

the Younger, and *F. G.* or to either of them since the Death of the said *T. J.* the Testator, any reasonable Account of the same: But hath altogether refused to do it, either to the said Testator in his Life-time, or to the said *T. J.* and *F. G.* the now Plaintiffs, since his Death, and doth still refuse to do the same, either to the said *T. J.* or to the said *F. G.* the now Plaintiffs, or to either of them, to the Damage of them the said *T. J.* the Younger, and the said *F. G.* 10000*l.* And thereupon they bring their Suit, &c. And they the said *T. J.* the Younger, and *F. G.* bring here into Court the Letters Testamentary of the Testament of the said *T. J.* the Testator, by which it sufficiently appears to the Court here, that the said *T. J.* the Younger, and the said *F. G.* are Executors of the Testament of the said *T. J.* the Elder, and have the Administration of the said Will, &c.

*Damage with
Proffert of the
Letters Testa-
mentary.*

A Declaration in Account against a Bailiff and Guardian.

Devonshire, to wit. *C. T. Gent.* complains of *J. T. Gent.* being in the Custody of the Marshal, &c. of a Plea, That he render to him his reasonable Account from the Time that he was Guardian of the said *C.* and also from the Time that he was the Bailiff of the said *C.* at *S.* in the Parish of *A.* in the County aforesaid; for that, to wit, That whereas by the Common Council of the Kingdom of *England*, it was provided, That the Guardians of Lands and

*In B. R.
Against a
Bailiff and
Guardian.
Note.
See Lilly 13.
Pal. 13 W. 3.
1 Vent. 105.
Salk. 9.*

Guardians. Tenements held in Socage should render to the Heirs of such Lands and Tenements, when they come of full Age, their reasonable Account of the Issues arising from those Lands and Tenements from the Time wherein they had the Custody thereof by Reason of the Minority of the said Heirs: And whereas he the said *J. T.* had the Custody of the Lands and Tenements of the said *C. T.* during the said *C.*'s Minority, to wit, of two Mesuages, three Cotages, five Gardens, eight Acres of Land, thirty Acres of Meadow, fifty Acres of Pasture, thirty Acres of Wood, with the Appurtenances in *S.* aforesaid, in the said Parish of *A.* and said County of *D.* of which said Premisses he the said *J.* had the said Custody for more than ten Years, to wit, from the 6th Day of *January* in such a Year, to the 20th Day of *July* in such a Year, and for that whole Time received the Rents, Issues and Profits of the said Mesuages, Lands, Tenements and Hereditaments; yet he the said *J.* hath wholly refused, and still doth refuse to render to the said *C.* (who is now of the full Age of twenty-one Years) his reasonable Account of the same, though he the said *C.* was, to wit, on, &c. at *S.* aforesaid in the Parish and County aforesaid, and at divers other Times and Places since hath been thereto required: And also whereas he the said *J.* afterwards, to wit, on the 20th Day of *July*, &c. at, &c. was the Bailiff of him the said *C.* of two Mesuages, three Cotages, five Gardens (&c. *supra*) with the Appurtenances in *S.* aforesaid in the said Parish of *A.* and County of *D.* aforesaid, from the said 20th Day of *July* in the said Year, &c.

*First Count, as
Guardian.*

*2d Count, as
Bailiff.*

In Account.

313

Church-
wardens.

£c. last abovesaid, until the 7th Day of October, in, £c. (i. e. during the Time he was Bailiff or Receiver of the Rents after the Guardianship determined) and for and during that whole Time received and had the Rents, Issues and Profits of the same; to render his reasonable Account thereof to him the said C. when he should be thereto required; yet he the said J. although oftentimes thereto required, to wit, on, £c. at S. £c. hath not hitherto rendered his Account thereof to him the said C. but hitherto hath denied, and still doth altogether deny to render the same to him, to the Damage of him C. 1500*l*. And thereupon he brings his Suit, £c.

A Declaration and Pleadings in an Action of Account by the Present against the Late Churchwardens.

London, to wit. **N** Athaniel Andrews and Tho. Lucas Churchwardens of the Parish of St. Katharine Coleman-street, London, complain of Thomas Thorn-ton, late Churchwarden of the Parish aforesaid, being in the Custody of the Marshal, £c. of a Plea, That he render to them his reasonable Account from the Time wherein he was Warden of the Parish Church aforesaid, and Receiver of the Monies of the Parish Church aforesaid; for that, to wit, That whereas the aforesaid T. T. from the 10th Day of April in the Year of the Lord 1675 until the first Day of April 1676, at London aforesaid, to wit, in the said Parish of St. K. C. in the Ward of A. was Warden of the said Church, and

In B. R.
Account by
the Present a-
gainst the Late
Churchwar-
dens.

Lilly 12.
(Q.)
Cro. Jac. 234.
Præd. Reg.
267. 680. 30.
34.

Church-
wardens.

and Receiver of the Monies of the said Parish Church, and for the Time aforesaid had the Care, Management and Disposall of the Goods and Monies of the Parish Church aforesaid; and for the same Time, at *London* aforesaid, in the Parish and Ward aforesaid, he the said *T.* as Warden of the same Church, received by the proper Hands of him the said *T.* 100*l.* of lawful Money of *England* (*Great Britain*) of the Monies of the Church aforesaid, to lay out and expend to the Use of the same Parish Church; and to render his reasonable Account of the same Monies to them the said *N. A.* and *T. L.* the now Wardens of the same Church, when he should be thereto required; yet he the said *T. T.* tho' oftentimes thereto required, to wit, on such a Day, &c. in the Parish and Ward aforesaid, hath not rendered any reasonable Account of the said Monies to them the said *N. A.* and *T. T.* or to either of them; but hitherto hath wholly refused, and still doth refuse to render the same to the said *N. A.* and *T. T.* and to either of them, to the Damage of them the said *N.* and *T.* 100*l.* And thereupon they bring their Suit, &c.

Plea in Abatement, another
Warden not
named.

AND the aforesaid *T. T.* by *A. B.* his Attorney, comes and defends the Force and Injury, when, &c. and prays Judgment of the said Bill (*i. e.* the Declaration aforesaid) because he saith, That one *T. S.* on the 10th Day of *April* in the Year of the Lord 1695, in the said Bill mentioned, was together with him the said *T. T.* Warden and Receiver of the Monies, and had the Care and Administration of the Goods and Chattels of the

the Church aforesaid, for that Time, and that the said T. S. is yet living, and in full Life, to wit, at London aforesaid, in the Parish and Ward aforesaid, without that, that the aforesaid T. T. was alone Warden and Receiver of the Monies of the said Parish Church, and had by himself alone the Care, Management and Disposal of the Goods and Chattels of the said Church during the said Time, as the aforesaid N. and T. have in their said Bill above declared: And this he is ready to verify: Wherefore for that he the said T. S. (the said other Churchwarden) is not named in the Bill aforesaid, he the said T. T. prays Judgment, and that the Bill aforesaid may be quashed.

Traverse.

And they the aforesaid N. and T. do say, That for any Thing above in pleading alledged by him the said T. T. the said Bill of them the said N. and T. ought not to be quash'd, because they say, that the said Plea above pleaded by the said T. T. for quashing the said Bill and the Matter therein contained are not sufficient in Law to quash the said Bill of them the said N. and T. or to bar them the said N. and T. from having and maintaining their said Action against him the said T. T. And this they are ready to verify: Wherefore, for Default of a sufficient Plea in this Particular, they the said N. and T. pray Judgment, and that their Bill aforesaid may be adjudged good, and that the said T. T. may answer to the said Bill, &c. and for Causes of Demurrer in Law to that Plea, according to the Form of the Statute in such Case thereof lately made and provided, they shew and demonstrate

*Demurrer to
the Plea.*

Disnomer. Istrate to the Court these Causes following, to wit, for that the Plea is uncertain and contains in itself a Negative pregnant: And *Special Causes.* also because he the said *T. T.* hath by his Plea made a full Defence, and traversed Matter not traversable; and for that the said Plea wants Form, &c.

W. Thompson.

Plea, Misnomer in the Wife's Christian Name. Skin. 620.

And the said *A. B.* and *C.* his Wife against whom the said *E.* hath brought his Writ aforesaid, by the Name of *A. B.* and *F.* his Wife, by — their Attorney, come and defend the Force and Injury, and say, that she the said *C.* is named and called, and at the Day of suing out the Original Writ aforesaid of him the said *E.* and always before, and ever since was named, and called by the Name of *C.* without this, that she the said *C.* is or ever was called or known by the Name of *F.* And this they are ready to verify: Therefore they pray Judgment of the aforesaid Writ, and that the same Writ may be quashed, &c.

W. Hawkins.

Plea, Misnomer in the Christian Name; after another Manner.

And the same Person, who by the said Writ is named *A.* in his proper Person, comes and says, that he is named, and called *B.* and is known by that Name and not *A.* as by the said Writ is supposed: And this he is ready to verify: Therefore he prays Judgment of the aforesaid Writ, and that the same may be quashed, &c.

Replication.

And the said *C.* says, that the said Writ, for the Reason before alledged, ought not to be quashed, because he says, That he who affirms

affirms himself to be named *John* is named *George*, as by the said Writ is above supposed, and prays that this may be inquired of by the Country; and the said *J.* does likewise the same: Therefore, &c.

Misnomer.

And the said *A.* in his proper Person comes and says, That he is not nor can be supposed to be the same Person against whom the said *T.* hath brought his said Writ, because he says that he is named and called *A. N.* and by that Name and Surname hath always from the Time of his Nativity been known and called; without this, that he the said *A. N.* is or ever was known or called *A. M.* And this he is ready to verify: Wherefore he prays Judgment of the said Writ, and that the same may be quashed, &c.

Plea, Misnomer in the Surname.
4 Mod. 337.
6 Mod. 115.
1 Salk. 6. 75.
Mod. Cases
289. Lilly's
Entr. 1.

And the said *T.* says, That his said Writ for the Reason aforesaid alledged ought not to be quashed, because he says, that the said *A.* is, and at the Day of suing out the Original Writ of the said *T.* to wit, on the — Day of — in the Year of our Lord —, was called and known by the Name of *M.* as by the said Writ is above supposed, and prays that this may be inquired of by the Country; and the said *A.* does likewise the same: Therefore, &c.

Replication.

And *A. B.* of *W.* in the County aforesaid, Yeoman, in his proper Person comes and says, that he is the same Person against whom the said *C.* hath brought his said Writ, by the Name of *A. B.* of *W.* in the County aforesaid, Gentleman, and says, that he is, and at the Day of suing out the Original Writ of the said *C.* was a Yeoman; without this, that he the said *A.* on the same Day was

Plea, the Want of proper Addition.

*Duplicity of
Action.*

was a Gentleman, as by the said Writ is above supposed: And this he is ready to verify: Wherefore he prays Judgment of the said Writ, and that the same may be quashed, &c.

Replication.

And the said C. says, that his said Writ for the Reason before alledged, ought not to be quashed, because he says that the said A. on the Day of suing out the said Writ, to wit, on the ——— Day of ——— in the Year of our Lord ———, was a Gentleman, as by the said Writ is supposed: And this he prays, &c.

*Plea, another
Action pending
in this Court
for the same
Cause.*

Moor 539.

5 Co. 61.

Noy 82.

2 Vent. 170.

2 Show.

444-3.

2 Salk. 715.

And the said A. by ———, his Attorney, comes and defends the Force and Injury, and prays Judgment of the Original Writ of the said B. and C. because he says, that heretofore after the Death of the said D. and before the Day of purchasing the said Writ, that is to say, in ——— Term now last past, they the said B. and C. as Executors of the Testament of the said D. impleaded the said A. in this his Majesty's Court, before Sir R. E. Knt. and his Companions, then his said Majesty's Justices of the Bench here, in a certain Plea of Trespass on the Case, to the Damage of the said B. and C. of 40*l.* and then and there, to wit, that very same ——— Term now last past in this same Court here, by the said ——— their then Attorney, declared in the said Plea against the said A. in these Words following, to wit, for that whereas, &c. [recite the Declaration to the End] as by the said Record and Proceedings thereof, in the said Court here remaining, more fully appears; which said Plea is still pending in this Court, in no Ways determined
or

or discontinued: And the said *A.* doth aver *Duplicity of*
 that the three several Promises and Undertakings mentioned in the said former Action, *Action.*
 and the said three several Promises and Undertakings mentioned in this latter Action, are the same three Promises and Undertakings, and not different or divers Promises and Undertakings, and that the said *A.* the Defendant in the former Action, and the said *A.* the Defendant in this latter Action, are one and the same Person, and not different or divers Persons; and that the said *B.* and *C.* Plaintiffs in the said former Action, and the said *B.* and *C.* Plaintiffs in this latter Action are the same two Persons, and not different Persons: And that the said *D.* mentioned in the said former Action, and the said *D.* mentioned in this latter Action, are all one and the same Person, and not different or divers Persons: And this he is ready to verify: Therefore he prays Judgment of this latter Writ pending the said former Plea, and that this Writ may be quashed.

And the said *A.* by — his Attorney, comes and defends the Force and Injury, and prays Judgment of the said Bill, because he says, that the said *B.* heretofore, before the Day of exhibiting the said Bill of the said *B.* to wit, in *Hilary* Term in the 11th Year of the Reign of the said Lord the now King, before Sir *R. E. Knt.* and his Companions, then Justices of the said Lord the now King of the Bench, to wit, at *Westminster* in the County of *Middlesex*, impleaded the said *A.* by the Name of *A. C.* late of *London*, Carpenter, otherwise called *A. C.* Son of *A. G.* late Citizen and Upholder of *London*, deceased,
 in

In B. R.
Plea, another
Action pend-
ing in C. B.
for the same
Matter, viz.
Breach of Co-
venant.

Duplicity of in a Plea of Breach of Covenant, and then
Issue. and there, that is to say, that very same
Hilary Term, in declaring against him the
 said *A.* in the said Plea, in the same Court
 of the Bench, by — his Attorney then
 said, That whereas the City of *London* [re-
 cite the whole Issue] which said Plea is still
 pending in the same Court of the Bench, in
 no ways determined or discontinued, as by
 the said Record and Proceedings thereof in
 the said Court of the said Lord the now
 King of the Bench, to wit, at *Westminster* a-
 foresaid in the County of *Middlesex* afore-
 said, remaining more fully and manifestly ap-
 pears: And the said *A.* further says, that the
 said *B.* named in said Record, and the said
B. named in the said Bill and Declaration
 now obtained, is one and the same Person,
 and not another or different Person; and
 that the said *A.* named also in the said Re-
 cord, and the said *A.* named also in the said
 Bill and Declaration of the said *B.* now ob-
 tained, are one and the same Person, and
 not different or divers; and that the said In-
 dentures in the said several Declarations spe-
 cified are one and the same Indentures, and
 not divers or different, and that the Breach
 of Covenant aforesaid, to wit, the Depart-
 ing and Absenting of the said *A.* from the Ser-
 vice of the said *B.* assigned in the Declarati-
 on in the said former Action and Record a-
 bove specified and contained, and the Breach
 of Covenant aforesaid, to wit, the Depart-
 ing and Absenting of the said *A.* from the
 Service of the said *B.* assigned in the Decla-
 ration in this latter Action now prosecuted,
 are one and the same Breach of Covenant;

and

and the same Departing and Absenting of the said *A.* from the Service of the said *B.* are one and the same Thing, Matter and Cause of Action, and not another nor different, and done at one and the same Instant of Time, although some Variation thereof is craftily and subtilly alledged to be in the said Declaration, as to the Time of the departing of the said *A.* from the Service of the said *B.* and the Space of Time of the Absence of the said *A.* from the Service of the said *B.* so as that one and the same Departing of the said *A.* might the better seem and appear to be several, different, and distinct: And this he is ready to verify: Wherefore he prays Judgment of the said Bill in Form aforesaid, (the said former Plea for the same Cause of Action as aforesaid in the Court of the Bench aforesaid still pending, in no ways discontinued or determined) And that the said Bill may be quashed, &c.

Duplicity of
Billion.

Here Note, That Venit & Dicit, or Difference
cit only is a good Defence by Attorney, 2 Salk. in Pleas in
543, 544. And see the Case of Walford and Abatement,
Saville, 1 Lutw. 7. &c. where, on a Special See Co. Lit.
Demurrer to a Plea in Abatement as above, it 127.
was held a good Plea, though no Defence was Tel. 110.
therein; and to me it seems to be meer Mat- Bro. Tit. De-
ter of Form and Surplusage, and consequently fence, 23, 30,
the Retaining or Omission of it shall not viti- 31, 40.
ate the Plea: And therefore the Plea above
seems Good, i. e. That one Churchwarden is not
to answer without his Companion: But Note,
as to Defences our Books do plainly make a Dif-
ference between Pleas in Abatement and Pleas
in Bar. For where you are to defend the
Y Wrong

Wrong supposed by the Plaintiff by a Plea in Bar, you are to make the Common full Defence as above, and if such full Defence be not made, 'tis failing in Substance; but 'tis otherwise in Pleas in Abatement; for there the Defendant does not defend the Wrong, or plead to the Cause of the Action, but only excepts to the Form of the Writ or Declaration, Ability of the Plaintiff or Misnomer, Jurisdiction of the Court, &c. which do not draw the Right or the Wrong charged into Question.

DECLARATIONS and PLEADINGS in *Acti-* *ons of Covenant.*

*A Declaration against an Administratrix
on an Indenture of Covenants.*

Middlesex, to wit. JOHN Child, Esq; com- In B. R.
plains of *Lucie How*, *Against an*
Widow, Administratrix of all and singular *Administra-*
the Goods and Chattels, Rights and Credits, *trix on an In-*
which were of *Thomas How*, Esq; her late *denture of*
Husband, deceased, otherwise lately called *Covenants.*
Thomas How, (&c. as in the Deed) in Cu- See Lilly 132.
stody of the Marshal, &c. of a Plea of Breach
of Covenant; for that, to wit, That where-
as by a certain Indenture made at *Westmin-*
ster in the said County of *Middlesex*, on the
24th Day of *April* in the Year of our Lord
1700, made between the said *T. How* in his
Life, by the Name of *T. How* of the *Inner*
Temple, London, Esq; of the one Part, and
him the said *John Child* by the Name of *J. C.*
of the *Middle Temple, London*, Esq; of the
other Part, one Part of which said Inden-
ture, sealed with the Seal of the said *T. H.*
in his Life, he the said *J. C.* brings here in-
to Court (which is dated on the same Day
and Year) reciting, among other Things,
That

*Testimoni-
Oratores.*

Protestando.

Interment.

That whereas he the said *T. H.* was indebted to him the said *J. C.* by a certain Note under his Hand in the Sum of 39*l.* for which said Sum he had agreed to pay Interest, he the said *T. H.* did thereby among other Things covenant with the said *J. C.* to pay to him the said 39*l.* with the Interest thereof, accordingly, as by the same Indenture may among other Things more fully appear: And he the same *J. C.* by protesting that the aforesaid *T. H.* in his Life-time, or the said *L.* after the Death of the said *T.* have not performed any of the Covenants or Grants in the said Indenture contained on their Part to be performed, in Fact saith, That he the said *T. H.* before the making of the said Indenture, to wit, on the 16th Day of *October* in the sixth Year of the Reign of the Lord the now King, at *Westminster* aforesaid, by his Note aforesaid, became and was indebted to the said *J. C.* in the aforesaid Sum; and that he the said *T. H.* in his Life-time, or the said *L.* after the Death of the said *T.* although often requested, have not paid the said 39*l.* with the Interest, or any Part thereof, to the said *J. C.* nor hath either of them paid it, but they, and each of them have refused to pay it; and she the said *Lucie* doth still refuse to pay it; To which said *L.* after the Death of the said *T.* the Administration of all and singular the Goods and Chattels, Rights and Credits which were of the said *T.* at the Time of his Death, was in due Manner committed, to wit, at *Westminster* aforesaid; and so the said *J. C.* saith, That the said *T.* in his Life-time, and the said *L.* since the said *T.*'s Death, although often request-

requested thereto, have not, nor hath either of them kept or performed to the said *J.* the Covenant of the said *T.* so made as aforesaid with him the said *J.* in this Particular, but have, and each of them hath wholly broken and refused to keep the same, and she the said *L.* doth still wholly refuse to keep the same, to the Damage of the said *J.* 50*l.* And thereupon he brings this Suit, &c.

A Declaration in Covenant on a Bill of Sale of Goods with Warranty.

*D. * to wit.* **A.** H. late of the Town of * Vid. post.
of *H.* Esq; was summoned to answer to *J.* ^{In C. B.}
G. of a Plea, That he keep with him the ^{On a Bill of}
Covenants between them, made according ^{Sale of Goods,}
to the Force, Form, and Effect of a certain ^{&c.}
Writing made by the said *A.* to him the said *J.* ^{See Lilly 138.}
And whereupon he the said *J.* by *W. A.*
his Attorney, saith, That the said *A.* on,
&c. at the Town of *H.* aforesaid, by a cer-
tain Writing, sealed with his Seal, and now
brought here into Court, bearing Date on
the same Day and Year, for and in Consid-
eration of the Sum of 48*l.* and 10*s.* of law-
ful Money of this Kingdom, to him in Hand
paid by him the said *J.* bargain'd and sold to
the said *J.* the Goods and Things mention-
ed in a Schedule to the same Writing sub-
scribed and annexed as Part thereof; To have
and to hold the same to the said *J.* his Exe-
cutors, Administrators and Assigns, to the
only Use and Behoof of the said *J.* his Exe-
cutors, Administrators, and Assigns for ever;
Y 3 and

*Bills of
Sale.*



*A Sale with-
out any Pro-
perty.*

and he the said *A* by the same Writing co-
venanted with the said *J*. That he the said
A would by the same Writing warrant and
for ever defend the said bargained Premises
unto the said *J*. his Executors, Administra-
tors and Assigns, against all Persons whatso-
ever, as by the said Writing, with the said
Schedule thereto annexed, may more fully
and clearly appear: And he the said *J*. in
Fact saith, That the Premises so sold as a-
foresaid, and in the said Schedule mention-
ed, are certain Goods and Chattels then be-
ing in a Brewhouse, then in the Possession of
him the said *A. H.* and without the Houses of
the then late *J. W.* situate in the said Town
of *H.* and were and are, one File of Metal
call'd a Kiln-Wire, all the Iron Backs of
Chimneys in the said House, all the Locks
and Keys of the said House, all the Leaden
Pipes with Brass Cocks, the little Stove in
the Kitchen (*and so name all the Goods as in
the Schedule*): And he the said *J*. in Fact saith,
That he the said *A* had, at the Time of the
said Sale so made by him of the said Goods
and Chattels as aforesaid, no Interest in Pos-
session or Property of, in or to the said
Goods and Chattels, or to any Parcel there-
of, but the true Property thereof was in one
J. H. and so he the said *A* tho' oftentimes
thereto requested by the said *J*. to wit, on,
&c. at the Town of *H.* aforesaid, hath not
kept his said Covenant above made with the
said *A* in that Particular, but hath broken
the same, and hath wholly refused, and still
doth refuse to keep the same, to the Damage
of him the said *J*. 50*l*. And thereupon he
brings this Suit, &c.

And the said *A.* by *C. N.* his Attorney comes and defends the Force and Injury, when, &c. and saith, That the Declaration aforesaid, and the Matter therein contained, are not sufficient in Law for him the said *J.* to have his Action to be maintained against him the said *A.* and that he the said *A.* hath no Need, nor is by the Law of the Land bound to answer to that Declaration; wherefore for Default of a sufficient Declaration in this Particular, he the said *A.* prays Judgment, and that the aforesaid *J.* may be barred from having his said Action against him the said *A.* And for Causes of Demurrer in Law upon that Declaration, he the said *A.* according to the Form of the Statute in such Case made and provided, shews and demonstrates to the Court here these Causes following, to wit, in that, That by the Declaration aforesaid no *Place or County* is alledged from whence any Venue may arise, or from whence any Jury may come to try whether any, and what of the said Goods were contained in the said Schedule, or whether the Property of the said Goods and Chattels in the said Declaration specified, was, at the Time of making the Writing in the said Declaration mentioned, in the said *A.* or in the said *J. H.* and in that, That it doth not appear by what Name the said *A.* is named, or what Addition he hath in the said Writing, as it ought to have been; so that it might manifestly appear, that he is the same Person which is named in the said Writing; And also in that, That the said Declaration is insensible in itself, and contradictory, by alledging first, that at the Time of

Of Sale.

*A Demurres to the Declaration.**With Special Cause.*

Note; divers of these Matters are corrected in the above Precedent.

the making of the said Writing he the said *A.* by the Writing aforesaid had sold and delivered the said Goods and Chattels in the same Declaration mentioned, and afterwards alledging, that he the said *A.* at the same Time of the making of the said Writing had no Possession or Property of, in or to the same Goods and Chattels; And also that it is not alledged expressly and affirmatively, that there was any Schedule annexed to the said Writing, whereof any Issue can be taken or joined; And also in that, that the said Declaration is wholly uncertain, and wanteth Form.

Finden.

And the aforesaid *J.* (for that, that he hath above alledged sufficient Matter in Law to maintain his said Declaration, as he is ready to verify; which said Declaration he the said *A.* doth not deny, nor any Way answer thereto, but altogether refuses to admit that Verification thereof) prays Judgment and his Damages by Occasion of the Breach of the said Covenant to be adjudged to him, &c.

A Declaration in Covenant by a Devisee against the Assignee of a Term.

*In B. R.
By a Devisee
against the As-
signee of a
Term.*

Hampshire, to wit. A. L. complains of J. E. Knt. and T. H. Esq; Assignees of F. H. Esq; in the Custody of the Marshal, &c. of a Plea of Covenant broken; for that, to wit, That whereas one A. M. Widow, on the 8th Day of June in the Year of our Lord 1730, was seised in her Demesne as of Fee of and in one Mesuage or Tenement.

ment and Farm, with the Appurtenances, called *A.* otherwise *B.* situate and being in the Parish of *B.* near the City of *W.* in the said County of *S.* And being so seised the said *A. M.* by her Indenture made on the 8th Day of *June* in the Year aforesaid, at the said Parish of *B.* in the County of *S.* aforesaid, between her the said *A. M.* by the Name of *A. M.* of *W.* in the Parish of *E.* in the County of *S.* Widow, of the one Part, and the said *T. H.* in his Life, by the Name of (*&c. as in the Deed*) of the other Part, (which said other Part sealed with the Seal of the said *T. H.* in his Life, he the said *A. L.* brings here into Court, bearing Date the same Day and Year) did demise, grant, and to farm lett unto the aforesaid *T. J.* in his Life, the Premises aforesaid, with the Appurtenances, called or known by the Name of the *A.* otherwise *B.* situate and being in the Parish of *B.* near the City of *W.* in the said County of *S.* and all and singular the Houses, Edifices, (*&c. as in the Lease*) with a Recital also of the Habendum, Reddendum; and then the Covenant to repair thus: And the aforesaid *T. H.* in his Life had for himself, his Executors, and Administrators, covenanted and granted to and with the said *A. M.* her Executors, Administrators and Assignes, by the same Indenture, That he the said *T.* his Executors, Administrators and Assignes, or some or one of them, from Time to Time, and and at all Times thereafter, during the said Term, should and would, at their own proper Costs and Charges, well and sufficiently repair, amend, *&c.* and keep the House, Mesuage or Tenement, Barns, Stables,

bles, &c. and also all Edifices, Structures and Buildings, then standing, and being in and upon the Premises, or any Part thereof, with all needful and necessary Reparations and Materials whatsoever, and also keep and preserve the Hedges, and Walls, and Fences, and scour, purge, and cleanse the Drains, Ditches, Sewers, &c. (as the Deed) and at the End of the Term leave, surrender, and yield up the said Mesuages, &c. so well repaired, &c. by Virtue of which said Demise he the said *T. H.* in his Life enter'd into the said Mesuage, Tenement and Premises, and was thereof possessed, the Reversion of the same Mesuage and Tenement, &c. belonging to the said *A. M.* and her Heirs: And the aforesaid *T. H.* being so possessed of the Mesuage and Tenement, with the Appurtenances, as aforesaid, and she the said *A. M.* of the Reversion of the same Mesuage and Tenement being seised in her Demaine as of Fee; he the said *T. H.* afterwards, to wit, on, &c. at, &c. made his Testament and Last Will in Writing, and of the same Testament did then and there constitute and appoint the said *J. E. T. H.* and *M. F.* his Executors, and afterwards died possessed of the said Tenements, with their Appurtenances aforesaid; after whose Death they the said *J. E. T. H.* and *M. F.* did take upon themselves the Execution of the Testament aforesaid, and enter'd into the said Tenements, with their Appurtenances, so demised to the said *T. H.* in Form as aforesaid, and were thereof possessed by Reason of the Execution of the Testament aforesaid, the Reversion of the said Tenements and Appurtenances

Entry of the Lessee.

Who made his Will, &c.

Which the Executors proved and entered.

purtenances belonging to the said *A. M.* and her Heirs as aforesaid, of which said Reversion she the said *A.* was then and there seised in her Demesne as of Fee as aforesaid: And she the said *A.* being so seised of the Reversion of the said Tenements and Appurtenances, did afterwards, to wit, on, &c. at, &c. in the County aforesaid, make her Testament and Last Will in Writing; and by the same Testament willed and devised all the said Tenements, with their Appurtenances, to *J. E.* Esq; since deceased, and to the said *A. L.* then the Wife of the said *J. L.* and to the Survivor of them, for and during the Lives of them, and the Life of the Survivor of them: And afterwards, to wit, on, &c. at, &c. in the said County of *S.* she the said *A. M.* died so seised of the Reversion of the Tenements and Appurtenances in the Form aforesaid; after whose Death they the said *J. L.* and *A.* his Wife, by Virtue of the Devise and Bequest aforesaid, became and were seised of and in the Reversion of the same Tenements and Appurtenances in their Demesne as of Freehold, for the Term of their Lives, and of the Life of the longer Liver of them: And afterwards, to wit, on, &c. at, &c. in the said County of *S.* he the said *J. L.* died seised of such his Estate in the said Tenements, &c. as aforesaid: And she the said *A. L.* did then and there survive him, the said *J. L.* and thereby became, and was, and yet is sole seised of the Reversion of the same Tenements, &c. in her Demesne as of Freehold, for the Term of her Life: And she the said *A. L.* further saith, That altho' she the said *A. M.* in her Life, and the said

The Lessor devises to two for their Lives.

One of the Devisees dies.

Breach of

J. L.

Witness.

*Special Wastes,
&c.*

J. L. and *A. L.* in the Life of the said *J.* after the Death of the said *A. M.* and she the said *A. L.* after the Death of the said *J. L.* have severally and respectively well and faithfully observed, perform'd, fulfilled and kept all and singular the Covenants, Articles, Grants and Agreements, in the aforesaid Indenture specified (which on the Parts of them the said *A. M. J. L.* and *A. L.* were to be observ'd, perform'd, fulfilled and kept) according to the Force, Form, and Effect of the same Indenture: Yet she the said *A. L.* in Fact saith, That during the Term aforesaid, and after the Death of the said *T. H.* to wit, on the 28th Day of *September* in such a Year, the Glass of the Windows of the said Mesuage so demised to the said *J. E.* as aforesaid, containing in Extent 40 Square Feet, to the Value of 40*s.* were broken, spoiled, and demolished; and the Tiles of the same Mesuage of such a Value were also blown and fell off, &c. (and the like may be shewn of the Timber, Walls, &c.) so that the said Mesuage of the Value of 200*l.* for Default of sufficient Tiling, Planking, Glazing, &c. stood unrepaired, unglazed, and greatly ruinous and in Decay from the said 28th Day of *September*, and so continue; by Rains and Tempests falling, and the Force of Winds beating thereon, the said Mesuage is become greatly decayed, wasted, and ruined, and more and more Decay, Waste and Ruin, do daily threaten the same Mesuage: And also That they the said *J. E. T. H.* and *F. M.* during the Term aforesaid, and after the Death of the said *T. H.* to wit, on the Day and Year last aforesaid, and for a long Time, &c.

one

In Covenant against

333

Signers.

one Dovehouse, belonging to the Mesuage
aforesaid, and being Parcel of the said de-
mised Premisses, of the Price of 50 *l.* permit-
ted to be unrepaired and decayed for Want
of Tiling, Walling and Plaistering thereof;
and also one Barn called the *Great Barn*; one
Malting-house, one House, &c. other Parcel
of the said Premisses so demised as aforesaid,
of the Price of 400 *l.* to be and stand unco-
ver'd, and in Decay for Want of Thatching,
Tiling, Leading, Walling and Plaistering,
Boarding, Joisting, Ground - selling, &c.
whereby the Fall, Ruin and Destruction of
the said Premisses are daily more and more
threaten'd; and also permitted one Garden-
Door, and 20 Perches of Posts, Pillars, and
Garden-Rails, Parcel of the same Premisses
of the Value of 10 *l.* to be putrified, corrupt-
ed, broken, prostrated, carried away and
spoiled for Want of repairing of the same:
And that they the said *J. E. &c.* being Te-
nants of the Tenements aforesaid, during the
Continuance of the said Term, or at the End
or Determination thereof, have not repaired
or amended the same Tenements, but suf-
fer'd the said Tenements to be so in Decay,
and unrepaired at the End of the said Term,
when they the said *J. E. &c.* left the said Te-
nements and Premisses so in Decay as afore-
said, without any Reparation or Amendment
whatsoever, against the Form and Effect of
the said Covenant in the said Indenture be-
fore mentioned: And so she the said *A. L.*
saith, That they the said *J. E. &c.* or either
of them, have not perform'd the said Cove-
nant with the said *T. H.* in his Life, or the
said *J. L.* in his Life, or the said *A. L.* since
their

Leases.

their Death, though they the said *J. E. &c.* and every of them, have been often thereunto requested, to wit, on, *&c.* at, *&c.* in the County aforesaid; but they the said *J. E. &c.* have unjustly broken the same, and have hitherto denied, and still do, and every of them doth deny to perform the same to her the said *A. L.* Whereupon she the said *A. L.* saith, That she is injured, and hath Damage to the Value of 200*l.* And thereupon she brings this Suit, *&c.*

Damage.

A Declaration in Covenant for Non-payment of Rent, &c.

In C. B.
For not paying
Rent, &c.
See 3 Lev.
229, &c.

Recital of the
Lease to the
Defendant.

Herefordshire, to wit. **T** M. late of *W.* in the County aforesaid, Gent. was attached to answer to Sir *J. E. Knt.* and Sir *R. D. Knt.* and Bart. of a Plea of Covenant broken, and whereupon they the same *J.* and *R.* by *F. E.* their Attorney complain, That whereas the Right Honourable *E. Viscountess P.* on the 11th Day of *April, &c.* was seised in her Demesne as of Fee of and in a certain Park, called *Radnor Park*, containing by Estimation 100 Acres or thereabout, and also of and in one Mesuage, situate and being in a certain Place called the *Cross* in the County aforesaid, with the Appurtenances; and being so thereof seised the Day and Year aforesaid, by a certain Indenture, made at *Westminster* aforesaid, between her the said Viscountess by the Name of *Elizabeth Viscountess P.* late Wife of the Right Honourable *Robert Viscount P. Baron of D.* deceased, otherwise called

In Covenant on

335

Leases.

called *Robert Danvers*, alias *Villiers*, Esq; of the one Part, and the afore said *T. M.* by the Name of *T. M.* of the Parish of *New-Radnor*, Gent. of the other Part, which said other Part of the said Indenture, sealed with the Seal of him the said *T. M.* they the said *J.* and *R.* do bring here into Court, dated the same Day and Year, had, for the Consideration in the same Indenture mentioned, demised, granted, and to Farm lett, unto him the said *T. M.* the said Tenements, with their Appurtenances, and all Ways, Easements, Waters, Profits, Commodities and Appurtenances whatsoever to the same Park and Lands belonging and appertaining; or with the same used and enjoyed as Part, Parcel or Member thereof; (Excepting, and always reserving out of the said Demise and Grant, unto the said Viscountess, and her Heirs and Assigns, all and all Manner of Woods, Underwoods, Timber and Trees then standing, growing, and being, or that should afterwards stand, grow, or be in or upon the said demised Premisses, or any Part thereof;) To have and to hold the said Park, Lands and Mesnage, and all other the Premisses so demised by the said Indenture, or mentioned or intended to be so demised, with the Appurtenances, except before excepted, unto him the said *T. M.* his Executors, Administrators and Assigns, from the 26th Day of *March* then last past, for and until the full End and Term of 16 Years from thence next following, and fully to be compleat and ended; yielding and paying therefore yearly, and every Year during the said Term, unto the said Viscountess *P.* and her Heirs

The Premisses.

The Haben-
Lands and Mesnage, and all other the Pre-
dum.

Reddendum.

Leases.

Heirs and Assigns the Rent or Sum of 38*l.* of lawful Money of this Kingdom, at the two most usual Feasts or Days of Payment in the Year, to wit, *Éc.* at or in the *Bell-Inn* at *Old-Radnor*, by even and equal Portions. And he the said *T.* did by the same Indenture, for himself, his Heirs, Executors and Administrators, Covenant, Promise and agree to and with the said Viscountess, her Heirs and Assigns, That he the said *T. M.* his Executors, Administrators and Assigns, or some, or one of them, would from Time to Time, and at all Times, for and during the said Term, well and faithfully pay or cause to be paid unto the said Viscountess, her Heirs and Assigns, the said Rent of 38*l.* at the Days and Place appointed for the Payment thereof, according to the true Intent of the Indenture aforesaid, as by the same Indenture brought into the Court here may among other Things more fully appear; by Virtue of which said Demise he the said *T.* entered into the Tenements aforesaid, with the Appurtenances, and was, and yet is possessed thereof; and he the said *T.* being so possessed, and the said *E. Viscountess P.* being seised of the Reversion of the said Park, Tenements and Appurtenances in her Demesne as of Fee as aforesaid, she the said *Elizabeth* afterwards, to wit, on the 25th Day of *February*, *Éc.* at *Westminster* in the County aforesaid, in and by a certain Indenture made between the said *E.* by the Name of the Right Honourable *Elizabeth* Viscountess *P.* sometimes called *Elizabeth Danvers*, alias *Elizabeth Villiers*, Widow, of the one Part, and the said *J. E.* and *R. D.* by the Name

Entry of the
Leases.Grant of the
Reversion.

Name of *J. E. of H.* in the County of *S.* Gent. and *R. D. of Lincoln's Inn*, in the County of *M.* Esq; of the other Part, one Part of which said Indenture sealed with the Seal of the said *Elizabeth* Viscountess *P.* they the said *J.* and *R. D.* do bring here into Court, dated the same Day and Year, for the Consideration of (set it forth) did grant unto them the said *J.* and *R.* among other Things the Reversion and Reversions, Remainder and Remainders, and the Rents of all and singular the Tenements aforesaid, with their Appurtenances; To have and to Habendum, hold to the said *R. D.* and *J. E.* his Heirs and Assigns; *To the only Use and behoof of them the said R. D. and J. E. their Heirs and Assigns for ever* (Quære the Reddendum to the Granter) as by the same last recited Indenture may among other Things more fully appear: To which said Grant of the Tenements aforesaid, so made by the said *Elizabeth* Viscountess *P.* to the said *J. E.* and *R. D.* as aforesaid, he the said *T. M.* being then possessed of the same Tenements, so demised to him as aforesaid, did afterwards, to wit, on the 25th Day of *March* in the Year *36.* aforesaid, at *Westminster* aforesaid, Attorn himself, and agree, and then and there became Tenant of the Premises to hold the same of them the said *J. E.* and *R. D.* for and during the Residue of his said Term therein then to come and unexpired: By Virtue of which said Grant and Attornment they the said *J. E.* and *R. D.* became and were seised in their Demesne as of Fee of the Reversion of the Tenements aforesaid, with the Appurtenances so demised to the said *T.*

Note; These Words are omitted in 3 Lev. 231, which made the Error in that Declaration.

Attornment.

Leases.

as aforesaid; and they the said *J. E.* and *R. D.* do say, That although the the said *E.* from the Time of making the said Indenture of Demise, until the making of the said Grant of the Reversion to them the said *J.* and *R.* as aforesaid, and they the said *J.* and *R.* after the making of the said recited Indenture of Grant of the Reversion aforesaid, have well and faithfully performed, fulfilled and kept all and singular the Covenants, Grants, Articles and Agreements in the said Indenture of Demise contained, which on the Part of the said *Elizabeth* (or of the said *J.* and *R.*) were to be done and performed, according to the Form and Effect of the said recited Indenture of Demise; yet they the said *J.* and *R.* in Fact say, That he the said *T.* after the making of the said Indenture of Assignment of the said Reversion unto the said *J.* and *R.* as aforesaid, and before the End of the Term so demised to the said *T.* as aforesaid, hath not paid to them the said *J. E.* and *R. D.* 38*l.* of the said Yearly Rent, due and in Arrear to them the said *J.* and *R.* for one Year, ending at the Feast of *St. Michael* in the Year, *38.* and so they the said *J.* and *R.* say, That the aforesaid *T.* hath not kept, but unjustly broken his said Covenant, and hath hitherto refused, and still doth refuse to keep the same; to the Damage of them the said *J.* and *R.* 50*l.* And thereupon they bring this Suit, &c.

**Assessment of
Breach.**

A. Dr.

*A Declaration in Covenant on a Charter-
Party of Freightment.*

London, to wit. **A** *Rthur Shallet*, late of *London*, Merchant, otherwise called *A. S. &c.* (as in the Deed) was summoned to answer to *S. Cole* of a Plea, That he keep with him the Covenant between them made, according to Force, Form and Effect of a certain Indenture of Charter-Party of Affreightment indented thereof made between them; and whereupon he the said *S.* by *R. H.* his Attorney saith, That whereas by a certain Charter-Party of Affreightment indented, made the 26th Day of *August* in the Year of our Lord, &c. at *London* aforesaid, to wit, in the Parish, &c. in the Ward, &c. between him the said *S.* by the Name of *S. Cole* of *London*, Merchant, Part-Owner of the Good Ship or Vessel, called *The Adventure of London*, of the Burden of 44 Tons or thereabout, whereof *John N.* was then Master, and then at Anchor in the River *Tbames*, *London*, of the one Part, and the aforesaid *A. S.* by the Name of *A. S.* of *London*, Merchant, of the other Part, which Part whereof, sealed with the Seal of the said *A. S.* he the said *S. Cole* brings here into Court, whose Date is the same Day and Year, whereby 'tis witnessed, That the said Part-Owner had granted and let to Freight the said Ship or Vessel to him the said *A. S.* and that he the said *A. S.* had hired the same Ship or Vessel for a Voyage to be made there- With, as in the said Charter-Party was (is)

Z. 2 mention-

In B. R.
On a Charter-
Party of
Freight, &c.
Lev. Ent. 34
See 3 Lev. 41

Charter-
Parties.

Covenants on
the Plaintiff's
Part.

Note; The
Covenants are
here abridged,
being very pro-
lix in the Ori-
ginal.

Covenants on
the Defen-
dant's Part.

mentioned; and thereupon the said Part-Owner for himself, his Executors and Administrators, covenanted, granted and agreed to and with the said *A. S.* his Executors and Assigns by the said Charter-Party in Manner and Form following, that is to say, That the said Ship or Vessel should remain in the Port of *London*, for the Space of seven Days from the Date of the said Charter-Party, if the said Ship or Vessel should not be sooner dispatched, and should there take in and receive such Goods and Merchandizes as he the said *A. S.* or his Assigns should order to be put on board the same; and at the Expiration of the said Term should directly, as Wind and Weather would permit, depart, and sail into the *Downs*, and from thence with the first *English* Convoy, which should go for the *Mediterranean-Sea*, should set sail, and as the Wind and Weather would permit, proceed, and sail to the Port of *Barcelona*, or so near thereto as she could with Safety arrive there to make a true Delivery to the said *A. S.* his Factors or Assigns of her Loading, which should be so received on board at *London*, as aforesaid; And further, That she should at *Barcelona* take in a lading of Wines &c. and thence return to *London*, and that the Demorage of the said Ship should not exceed the said Voyage forty Days, (&c. see the Precedent at large) And thereupon the said *A. S.* (the Defendant) did thereby for himself, his Executors and Administrators, covenant, grant, and agree, to and with the said *S. C.* his Executors and Administrators in Manner following, to wit, That he the said *A. S.* his Executors, Factors or Assigns would not

not only unlade and relade the said Ship or Vessel at *Barcelona* aforesaid, with Wines and other Goods and Merchandizes, and deliver and discharge her of the same Wines, &c. at *London* aforesaid, within the said Forty Days allowed to the said *S. C.* for the Demorage of the said Ship, but would also well and faithfully pay 176*l.* for the Hire of the said Ship, to be paid within ten Days after her Return, with Primage and Average; and that he would keep the said Ship both at *Barcelona*, and also at *London*, after her Return, so that the Demorage did not exceed in the whole the Space of twenty Days over and above the said forty Days so allowed to the said *S. C.* (the Plaintiff) for Demorage of the said Ship as aforesaid; and that he the said *A. S.* or his Assigns would pay to the said *S. C.* 20*s.* *per Diem*, for every Day of such Demorage on his Part, besides the Hire of the said Ship, and one third Part of the Pilotage to be paid by the Plaintiff, and two thirds thereof by the Defendant (with divers other Covenants) also the said *S. C.* (the Plaintiff) Warrants the said Ship to be sound and substantial, and well and sufficiently victualled, tackled and apparelled and furnished with a good Boat, as also Sails, Anchors, Cables, &c. and binds himself in 350*l.* for Performance of the Covenants on his Part, and the Defendant binds himself in the like Sum for Performance on his Part, as by the said Charter-Party indented, &c. may more fully appear: *And then assigns the Breach of the said Covenants thus:* And he the said *S.* further saith, That although he hath well and faithfully perform'd, fulfilled, and kept

*The Plaintiff
Warrants the
Ship, &c.*

*Breach as-
signed.*

**Charter-
Parties.**

Protestando.

Advertent.

all and singular the Covenants, Grants and Agreements in the said Charter-Party contained, which on the Part of him the said S. were to be perform'd, fulfilled and kept; and also protesting that he the said A. hath not perform'd, fulfilled, or kept any of the Covenants, Grants or Agreements in the said Charter-Party contained, which on the Part of the said A. were to be perform'd, fulfilled, and kept; he the said S. in Fact saith, That after the making of the said Charter-Party, and after the Expiration of the said Space and Time of seven Days after the Date of the same Charter-Party, the Ship aforesaid being no sooner ready, to wit, on the 18th Day of *September* in the Year of our Lord 1700, the said Ship being then well and substantially fitted and supplied with all Things necessary for her said Voyage, and the Goods and Merchandizes of the said A. being then (by Order of the said A.) on board of the same, the said Ship departed from the said Port of *London*, (to wit, in the Parish and Ward aforesaid) directly as the Wind and Weather did permit, and proceeded to the *Downs*, and from thence with the first *English* Convoy that went for the *Mediterranean* Sea, the same Ship set sail, and as Wind and Weather did permit, proceeded and sailed towards the Port of *Barcelona*, in the said Charter-Party mentioned, to wit, in the Parts beyond Sea, at *London* aforesaid, in the Parish and Ward aforesaid, laden with the Goods and Merchandizes of the said A. as aforesaid; and the said Ship afterwards, to wit, on the 27th Day of *January* then next following, safely arrived at the said Port of *Barcelona*, and there made

made a right and true Discharge of the same Goods and Merchandizes, according to the Charter-Party aforesaid, to wit, at *London* aforesaid, in the Parish and Ward aforesaid; and that the same Ship, after her said Arrival at the said Port of *Barcelona*, did by occasion of the said *A.* and by his Order make Demorage there for more than the forty Days, and the twenty Days in the said Charter-Party mentioned, to wit, until the 17th Day of *April* then next following; and that he the said *A.* before the said 17th Day of *April* in the Year 1701, did not relade, or cause the said Ship to be reladen with Wines, Goods and Merchandizes, as whereas he ought to have reladen the same within the said Number of Days limited by the said Charter-Party in that Particular, according to the Form and Effect of the said Charter-Party: And that the Ship aforesaid, on the same Day and Year last mentioned, did set Sail and depart from the said Port of *Barcelona* being loaden with divers Goods and Merchandizes of him the said *A.* put on board the same Ship by Order of the said *A.* and with the same Goods and Merchandizes sailed and returned towards the said Port of *London*, and being so loaden with the said Goods and Merchandizes of the said *A.* as aforesaid, did there, to wit, at the said Port of *London*, arrive at the End of 13 Months, and three Weeks next after the said Voyage was first begun, that is to say, on the 9th Day of *November* in the Year of the Lord 1701. And the said *S.* having so finished the said Voyage, did afterwards, to wit, the Day and Year last mentioned, at the said Port of

Z 4

London,

Special
Branches.

1. That the
Demorage ex-
ceeded the
Time limited.

**Charter-
Parties.**

*2dly, That
the Defendant
had not paid
the 176 l.*

London, in the Parish and Ward aforesaid, make a right and true Discharge (unlading) of the said Ship, according to the Charter-Party aforesaid; and he the same *S.* further saith, That the said *A.* though oftentimes required, had not paid to the said *S.* the said 176 l. payable for the Freight of the said Ship, according to the Charter-Party aforesaid, or any Penny thereof, which he ought to have paid, according to the Form and Effect of the said Charter-Party; and he the said *S.* further saith, That the Money for Demorage of the said Ship for the said twenty Days more than (beyond) the said Forty Days made, according to the Allowance of the said Charter-Party, doth in itself amount to 20 l. and that he the said *A.* although thereto oftentimes required, hath not paid the said 20 l. for the said Demorage, nor any Penny thereof, payable to the said *S.* in that Particular, according to the Form and Effect of the Charter-Party aforesaid; and so he the said *S.* saith, That the aforesaid *A.* although oftentimes thereto required, hath not kept his said Covenants made with the said *S.* in this Particular, but hath broken the same, and hath hitherto wholly denied, and still doth deny to perform the same to him the said *S.* Wherefore he saith, That he is the worse, and hath Damage to the Value of 500 l. And thereupon he brings this Suit, &c.

The Plea.

And the said *A.* by *J. M.* his Attorney, comes and defends the Force and Injury, when, &c. and saith, That he the said *S. C.* ought not to have his Action thereof against him, because as to the Assigning of a Breach of a Covenant in the Demorage of the

the said Ship at *Barcelona* beyond the forty Days, and the twenty Days in the aforesaid Charter-Party mentioned, he saith, That the said Demorage was occasioned by the Default of the said *J. Nevil*, the Master of the said Ship, and his Servants, who during the Time of the said Demorage of the forty Days, and twenty Days in the Charter-Party aforesaid mentioned, were no way ready in the Ship or Boat aforesaid, to serve the said *A. J.* or any Factor of him the said *A.* to and from the Land there, so that he the said *A.* could not relade the said Ship within the several Days last mentioned: And this he the said *A.* is ready to verify: And as to the Assigning of a Breach of Covenant in the not paying of the Freight of the said Ship, he the said *A.* saith, That he afterwards, to wit, on the 17th Day of *April* in the Year of the Lord 1701, at *Barcelona* aforesaid, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, did procure the said Ship to be reladen with Wines to the Value of 1000*l.* and other Merchandizes of him the said *A.* and that the said Ship being so ready on the same Day and Year last mentioned departed from *Barcelona* aforesaid, but did not sail directly towards the Port of *London*, as Wind and Weather permitted; but afterwards, the same Day and Year last aforesaid, deviated from her said intended Voyage towards the Port of *London*, and sailed towards, and arrived at *Alicant* in the Parts beyond Sea, and afterwards to *Cadiz*, and afterwards sailed to *Tangier* in the Parts beyond Sea, to wit, at *London* aforesaid, in the Parish and Ward aforesaid, and by Occasion thereof

That the Demorage was occasioned by the Master and Servants:

*Charter-
Parties.*

Note.

thereof the said Ship did not arrive at the said Port of *London* until the 10th Day of *October* then next following; by Reason of which Deviation of the said Ship, and prolonging of the said Voyage, the said Wines so laden in the said Ship as aforesaid, grew sour, and became prick'd and spoiled, &c. And this he is ready to verify: Wherefore he the said *A.* prays Judgment, if the aforesaid *S.* ought to have his said Action against him.

*Demurrer to
the Plea.*

And the aforesaid *S.* saith, That the Plea of the aforesaid *A.* above pleaded, and the Matter therein contained, are not sufficient in Law to bar him the said *S.* from having his said Action against the said *A.* And that he hath no Need, nor is he bound by the Law of the Land, to answer to that Plea pleaded in the Manner and Form aforesaid: And this he is ready to verify: Wherefore for want of a sufficient Plea in this Particular, he the said *S.* prays Judgment, and his Damages by Occasion of the said Breach of Covenant to be adjudged to him.

Note.

And Note; On the Defendant's joining in Demurrer, Judgment was for the Plaintiff. See 3 Lev. 41.

DECLA-

DECLARATIONS and PLEADINGS in Ac- tions of Debt.

An Action of Debt, next to that of Case, is one of the most extensive Titles, as to the Recovery of Personal Rights, which we have in the Law, being as various in its kind, as the Nature of the Penal Bill, Covenant, or Contract, Bond or Obligation, Deed, Specialty, Award, Amercia-ment, Lease or Grant, Judgment, Record, or Act of Parliament is, upon which the same is founded. It also lies for Rent, or Arrears of Rent, as also against a Sheriff on an Escape; or for Money levied in Execution, and generally wherever an Indebitatus Assumpsit lies for any certain Sum, the Plaintiff in such Case may have either that Action, or an Action of Debt at his Election. Therefore, and for that the contracted Limits of this Discourse will not permit me to enlarge, I shall confine myself under this Head to Declarations and Pleadings in some of the most common and obvious Cases, on Actions of Debt, to wit, on Indeb. Assumpsits, Bills, Bonds, Bail-Bonds, Sheriffs Bonds, Leases, Awards, Judgments, &c.

*The several
Kinds of Ac-
tions of Debt.*

*See before Tit.
Assumpsits,
&c.*

A De-

Declarations, &c.

A Declaration in Debt for Horse-Hire.

In B. R.
Debt on an
Assumpsit for
Horse-hire.

Middlesex, to wit. **A.** B. complains of **C.** D. being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a Plea, that he render to him 6*l.* of lawful Money of *Great Britain*, which he owes to him, and unjustly detains; for that, to wit, That whereas he the said **A.** on, &c. at, &c. in the County aforesaid, was possessed of one Horse of his own proper Horse, and being so possessed, afterwards, to wit, on the same Day and Year, at *T.* aforesaid, let the said Horse to the said **C.** for Hire, to be used and ridden by the said **C.** for the Space of three Weeks then next following; and from that Time, afterwards, as long as it should please the said **C.** to use, ride, or keep the said Horse, he the said **C.** rendering therefore to the said **A.** for the said three Weeks then next following, 4*os.* and 1*s.* and 6*d.* for every Day wherein he the said **C.** should detain the said Horse after the said three Weeks, to be paid to the said **A. B.** when he the said **C.** should be thereunto required: And the said **A.** saith, That in Fact he the said **C.** had used and rid the said Horse by the said Space of three Weeks, and also kept and detained the said Horse from the said **A.** by the further Space of 60 Days, whereby an Action hath accrued to the said **A.** to have of the said **C.** the said 6*l.* Yet he the said **C.** though oftentimes thereto required by the said **A.** hath not paid the said 6*l.* or any Penny thereof,

to

349

Bill Penal.

John Brown for the Defendant.

Pledges of the Prosecution { *John Doe*
and
Rich. Roe.

Note; It appears from the foregoing Precedent, That divers of the Precedents under the Titles, Assumpsit, Indebitatus Assumpsit, Covenant, &c. may be turned into Actions of Debt, i.e. where the Sum can be reduced to a Certainty: Yet in all Cases where Wager of Law is admitted, an Action on the Case, &c. is more eligible.

London, to wit.

London, to wit: **A** B. complains of C. D. *In B. R.*
(Ec. supra) That he *On a Bill Pen-*
 render to him 20*l.* of lawful, *Ec.* for that, *nal.*
 to wit, That whereas the said C. on, *Ec.*
 at, *Ec.* by his certain Bill Obligatory, sealed
 with the Seal of him the said C. here shewn
 to the Court of our said Lord the now King,
 and dated the same Day and Year, acknow-
 ledged himself to owe to the said A. the Sum
 of 10*l.* of lawful Money of Great Britain,
 to be paid to the said A. (his Executors, &c.
 if the Bill be so) at or upon the first Day
 of May then next following, after the Date
 of

Declarations, &c.

In Debt.

of the said Bill: And for the same Payment well and truly to be made, he the said C. by the same Bill firmly bound himself, his Heirs, Executors, and Administrators, in the said Penal Sum of 20*l.* And he the said A. saith, That in Fact he the said C. did not pay the said 10*l.* unto the said A. in or upon the said first Day of *May*, which he ought to have paid to him in and upon the same Day, according to the Form and Effect of the said Bill; whereby an Action hath accrued to the said A. to demand and have of the said C. the said 20*l.* as aforesaid: Yet he the said C. though thereto oft-times required, hath not yet paid the said 20*l.* &c. *supra.*

Without a Penalty.

Note; If the Bill be without a Penalty, say, To be paid to the said A. his Executors, Administrators, or Assigns, at or upon the first Day of *May* next after the Date of the Bill Obligatory aforesaid: And for the said Payment well and truly to be made, he the said C. bound himself, his Heirs, Executors and Administrators, firmly by the same Bill; yet he the said C. though often required, had not paid, &c.

A Declaration on a Common Bond, for Payment of Money.

*In B. R.
On a Common
Bond to pay
Money.*

Middlesex, to wit. A. B. complains of C. D. otherwise called C. D. (of such a Place, Addition, &c. as in the Bond or Specialty) being in the Custody of the Marshal, &c. of a Plea, That he render to him 100*l.* of lawful Money of Great

In Debt on

351

Great Britain, which he owes to him, and unjustly detains; for that, to wit, That whereas the aforesaid *C.* on the ninth Day of *May* in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at the Parish of *M.* in the County aforesaid, by his certain Writing Obligatory sealed with the Seal of the said *C.* and here shewn to the Court of our said Lord the now King, and dated the same Day and Year, acknowledged himself to be held and firmly bound to the said *A.* in the aforesaid 100*l.* to be paid to the said *A.* when he should be thereunto required: Yet he the said *C.* although often required, hath not yet paid the aforesaid 100*l.* to the said *C.* but hath wholly denied, and still doth deny to pay it to him, to the Damage of the said *A.* 20*l.* And thereupon he brings this Suit, &c.

Bond, &c.
Note this Form.

A Declaration by two Plaintiffs on a Bond; with Oyer, and a Demurrer thereto.

London, to wit. **E.** *Whistler*, late of *London*, Merchant, was summoned to answer to *R. Salter* and *J. Salter* of a Plea, That he render to them 142*l.* which he owes to them, and unjustly detains; and whereupon they the said *R.* and *J.* by *R. H.* their Attorney, say, That whereas the said *E.* on the 21st Day of the Month of *March* in the third Year of the Reign of our Lord *George*, now King of *Great Britain*, &c. at *London* aforesaid, to wit, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*,

In C. B.
Debt on Bond,
&c. by two
Plaintiffs.
Intr. Mich,
4 Geo. 1, Rot,

Declarations, &c.

Bond, &c.

Cheap, by his certain Writing Obligatory acknowledged, That he was bound to the said R. and J. and to one F. Salter now deceased, and whom the said R. and J. have survived, in the aforesaid 142 l. to be paid to the said R. and J. when he should be thereto required: Yet he the said E. though often required, hath not paid the said 142 l. unto the R. J. and F. or to either of them in the Life of the said F. or unto the said R. and J. or either of them, after the said Death of the said F. but hath hitherto altogether denied, and still doth deny to render the same to them, or to either of them: Wherefore they the said R. and J. say they are injured, and have Damage to the Value of 10 l. And thereupon they bring their Suit, &c. And they bring here into Court the Writing Obligatory aforesaid; which testifies the Debt in Form aforesaid; the Date whereof is the Day and Year abovesaid.

The Profert.

Plea.

Oyer.

The Condition.

And the aforesaid E. W. by J. R. his Attorney, comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing; and it is read unto him. He also prays Oyer of the Condition of the same Writing; and it is read to him in these Words, to wit, *The Condition of this Obligation is, That if the above bounden E. W. his Heirs, Executors, Administrators, or Assigns, shall and do well and truly pay, or cause to be paid, unto the above-named T. S. R. S. and F. S. or to any of them, their, or any of their Executors, Administrators or Assigns, the full Sum of 75 l. 5 s. of good and lawful Money of Great Britain, on or before the 21st Day of June next ensuing the Date of the above Obligation, together with Interest for the*

the same, at the Rate of, &c. per Annum, without Fraud or further Delay, then the said Obligation to be void, &c. Which being read and heard, he the said E. saith, That they the aforesaid R. and J. ought not to have or maintain their Action against him the said E. because he saith, That the said Declaration, and the Matter therein contained, is not sufficient in Law for the said R. and J. to have and maintain their said Action against him; to which said Declaration he the said E. hath no Need, nor is he by the Law of the Land bound to answer in any Manner: And this he is ready to verify: Wherefore for Want of a sufficient Declaration in this Particular, he the said E. prays Judgment of the said Declaration, and that the same Declaration may be *quash'd*: And for Causes of Demurrer in Law, according to the Form of the Statute in such Case lately made and provided, he the said E. shews to the Court here these following Causes; for that, that it does not appear, nor it is not alledged, That the Writing Obligatory aforesaid, in the Declaration above-mentioned, was sealed with the Seal of the said E. as by Law it ought; and for that, that the Declaration aforesaid is uncertain and wants Form, hath false Latin, &c.

For Cause.

But Note; On arguing this Demurrer, Judgment was for the Plaintiff, 7 November 1717.

Bonds, &c.

The Entry of a Declaration in Debt on Bond, where the Defendant, after a Special Imparlance, pleads his Privilege as an Attorney of B. R. in Abatement, to a Suit in C. B. Judgment to answer over.

In C. B.
Trin. 4 Geo. 1.
Debt on Bond,
with a Plea of
Privilege in
Abatement.
See Easter
Term, 4 Geo.
1 Roll 382.

Middlesex, to wit. **H**eretofore, as appears in Easter Term last past in Roll 382, it is contain'd thus; *Middlesex, to wit, Richard Combes*, late of the Parish of *St. Giles in the Fields* in the County aforesaid, Gentleman, otherwise called *Richard Combes* of the Parish of *St. Giles in the Fields* in the County of *Middlesex*, Gentleman, was summoned to answer to *Thomas Moore*, Gentleman, of a Plea, That he render to him 200*l.* which he owes to him, and unjustly detains; and whereupon the said *T.* by *G. R.* his Attorney, saith, That whereas the aforesaid *R.* on the 22d Day of *December* in the third Year of the Reign of our Sovereign Lord *George*, now King of *Great Britain*, at *Westminster* in the County aforesaid, by his certain Writing Obligatory had acknowledged himself to be held and firmly bound unto the said *T. M.* in the said 200*l.* to be paid to the said *T.* when he should be thereto required: Yet he the said *R.* though often required, had not yet render'd the said 200*l.* to the said *T.* but hath hitherto refused, and still doth refuse to render it to him; wherefore he saith, That he is injured, and hath Damage to the Value of

200*l.* Debt.400*l.*

400l. And thereupon he brings his Suit. Bonds, &c.
(And brings the Bond into Court, as above.)
See before, p. 351.

400l. Damages.

And the aforesaid Richard in his proper Person comes and defends the Force and Injury, when, where, &c. [see before, that this is needless in a Plea in Abatement] and prays

Plea in Abatement.
See infra.

Oyer of the Writing aforesaid; and it is read to him; he also prays Oyer of the Condition of the same Writing; and it is read to him in these Words: The Condition of this Obligation is such (&c. in the usual Form to pay 100l. on the 24th of March then next

Condition to pay 100l.

ensuing the Date) which being read and heard, he the said Richard, saying to himself all and all Manner of Advantages, Exceptions and Allegations, as well to the Writ, as to the Declaration, prays Leave to imparl thereto here until the Morrow of the Holy Trinity, and hath it. The same same Day is given to the aforesaid Thomas there, &c. At which Day the said R. came here in his proper Person, and saith, That the Court of the Lord the King now here ought not to have Cognizance in the Plea aforesaid, because he saith, That he the said R. is and was on the Day of suing out the Original Writ of the said T. and long before, and always from thence afterwards hitherto hath been, and now is an Attorney of the Court of our Lord the now King, before the King himself, the same Court being at Westminster in the County of Middlesex: And that he the said R. prosecutes and defends divers Pleas and Suits of and for divers Subjects of our said Lord the now King, as their Attorney, in the same Court of the said Lord the King, before the King

See Lutw. 431
44, 45.

Privilege of B. R. to a Suit in C. B.

Bonds, &c.

himself; and that all and every such Attorney or Attornies of the same Court ought not to be, nor have they or any of them, from the Time whereof the Memory of Man is not to the contrary, been accustomed to be drawn or compell'd against their Will or Wills, to answer before any Judges or Ministers of the said Lord the King, or before any other secular Judges whatsoever, except (in the said Court) before the said Lord the now King, and his Predecessors Kings and Queens of this Realm, in any Plea or Plaint (Pleas of Freehold, Felony, and Appeals only excepted) according to the Liberties and Privileges of the same Court of the said Lord the now King, before the King himself, and his Predecessors, Kings and Queens of this Realm, for the whole Time aforesaid used and approved: And this he is ready to verify: Wherefore he prays Judgment, if the Court of the said Lord the King now here will take any further Cognizance of the Plea aforesaid.

*Demurrer.
Conclusion.*

Whereof, and for Want of a sufficient Plea in this Particular, he the said T. prays Judgment, and that the Court here will take further Cognizance of that Plea: And that the said R. C. may further Answer to the Writ and Declaration aforesaid.

*Joinder and
Judgment.*

In which Demurrer the Defendant joined as usual; and on Argument July the fifth 1717 Judgment was, That the Defendant should answer over.

*Plea, Non
est Factum
after an Im-
pactance in
B. R.*

And now at this Day, to wit, on *Friday* next after the Morrow of the Holy *Trinity* in this same Term, until which Day the said *Richard*

Richard had Leave to imparl to the aforesaid *Bonds, &c.* Bill, and then to answer, &c. came as well the aforesaid *T.* by his Attorney aforesaid, as the aforesaid *R.* by *J. M.* his Attorney: And the same *R.* defends the Force and Injury, when, &c. and saith, That he by Force of the said Writing ought not to be charged with the said Debt, because he saith, That that Writing is not his Deed: And of this he puts himself on the Country; and the said *R.* doth so likewise, &c. Therefore let a Jury *Issue and* thereupon come before our Lord the King at *Venire a-* *Westminster*, on *Wednesday* next after the Oc- *warded.* *tave* of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the said Parties there, &c.

See of Memorandums, Juratas, and making up Records, &c. in Debt infra.

Note also, By the Statute of 4 & 5 Annæ, *Plea of Pay-* *for Amendment of the Law*, If the Money due *ment at the* on such Bond (for Payment of Money) be paid, *Day. See the* &c. before the Action brought, such Pay- *Stat. 4. 5. A.* *And Note this* *Form.* *ment, &c. may be pleaded as Payment at the* *Day, though it was paid after the Day;* *which Plea is in this Form, viz.*

Which (*i.e. The Obligation and Condition*) being read and heard, he the said *R.* saith, That the said *T.* ought not to have or maintain his said Action thereof against him, because he saith, That he the said *R.* paid to the said *T.* the said 100 *l.* in the Condition of the Writing Obligatory above mentioned, upon the 24th Day of *March* next following the Date of the said Writing, to wit, at *W.*

Bonds, &c. *aforesaid in the County of M. aforesaid: And this he is ready to verify: Wherefore he prays Judgment, if the said T. ought to have or mainrain his said Action thereof against him.*

Plea of Tender at the Day, with an Adhuc Paratus. In C. B.

And in the Case of Underhill against Mathews, Pas. 1 Geo. 1. in C. B. the Plea of Tender and Payment after the Day, was thus:

Which being read and heard, he the said R. (the Defendant) saith, That she the said Penelope ought not to have or recover her said Damages, (*Note; the Declaration was for a Debt, viz. 70l. due on Bond, and the Non-Payment laid to the Damage of 20l.*) by Occasion of the Detention of that Debt, because the said R. saith, that the *lawful Interest* of the said 70l. in the said Condition above mentioned, due on the 27th Day of November in the Year of our Lord 1714, did amount to 6l. 5s. and no more; And that he the said R. after the making of the said Writing Obligatory, and before the suing out the Original Writ of the said P. to wit, on the same 27th Day of November in the Year 1714 aforesaid, at the Parish aforesaid in the County aforesaid, was ready and offered to pay to the said P. the said 70l. in the Condition above-mentioned, and also the said 6l. and 5s. for the Interest thereof; which said 70l. and also the said 6l. and 5s. she the said P. did then and there altogether refuse to receive: And the said R. hath ever since hitherto been, and yet is ready to pay to the said P. the said 70 and 6l. and 5s. and brings the same 70 and 6l. and 5s. here into Court ready to be paid to the said P. if she will receive

In Debt on Arbitration

359

ceive it : And this he is ready to verify : *Bonds, &c.*
Wherefore he prays Judgment, if the said *P.*
ought to have or recover her said Damages
against him the said *R.* by Occasion of the
Detention of the said Debt. (*Quære* of the
Beginning and Conclusion of this Plea ?) *And*
Note, on a Demurrer thereto, Judgment was
for the Plaintiff. See *Dyer* 300. *Hob.* 150.
2 *Lev.* 209. 1 *Inst.* 217. 1 *Co.* 95.

*A Declaration in Debt upon an Arbitra-
tion Bond, with a Plea, Replication,
&c. with a special Demurrer.*

Devonshire, to wit. **J.** *Rood*, late of the In C. B.
J. *City of Exon* in On a Bond of
the County of the same City, Grocer, other- Arbitration.
wise called *J. R.* of the City of *Exon*, Gro- Pas. 2 Geo. 1.
cer, was summoned to answer to *W. Bingham* Rot.
of a Plea, That he render to him 500 *l.* which
he owes to him, and unjustly detains ; and
whereupon the said *W.* by *T. C.* his Attorney,
saith, That whereas the said *J.* on the 24th
Day of *July* in the 10th Year of the Reign
of the Lady *Anne*, late Queen of *Great Bri-
tain*, at ——— in the County aforesaid, by
his certain Writing obligatory, acknowledged
himself to be held and firmly bound to the
said *W.* in the said 500 *l.* to be paid to the
said *W.* when he the said *J.* should be thereto
required : Yet he the said *J.* tho' often re-
quired, hath not yet rendered the said 500 *l.*
to him the said *W.* but hath hitherto altoge-
ther refused, and still doth refuse, to render
it to him ; wherefore he the said *W.* saith,
that

A a 4

Bonds, &c.

The Plea.

Oyer prayed.

Form of the
Award.

that he is injured, and hath Damage to the Value of 40 l. (&c. with the usual Proferet.)

And the aforesaid J. by R. S. his Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing obligatory in the said Declaration specified; and 'tis read to him. He also prays Oyer of the Condition of the said Obligation; and 'tis read to him in these Words, *to wit,* *The Condition of this Obligation is such, That if the above-bownden J. R. and J. A. their Heirs, Executors and Administrators, for their and every of their (several) Parts and Behalfs, do in all Things well and truly stand to, obey, abide, perform, and keep the Award, Order, Arbitrament, Rule, Judgment, and Determination of Francis Drew of the City of Exon, Esq; Arbitrator, indifferently named, elected, and chosen, as well on the Part and Behalf of the above-bownden J. Rood and James Arundel, as on the Part and Behalf of the above named W. Bingham, to arbitrate, award, order, rule, judge and determine of and concerning all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Debts, Debates, Accounts, Specialties, Judgments, Executions, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever, at any Time heretofore had, made, proved, commenced, prosecuted, done, committed, or suffered by or between the said Parties, or any of them, so as the said Award be made by the said Arbitrators, and put in Writing under their Hands and Seals, on or before the 23d of October next, then this Obligation to be void, or else, &c.* Which being read and heard, he the said John saith, That the aforesaid William ought not to have or

In Debt on Arbitration

361

maintain his Action thereof against him, because he saith, that at any Time after the making of the said Writing, and within the Time in the said Condition limited in that Behalf, he the said *Francis Drew*, the Arbitrator therein named, made no Award of or concerning the Premisses in the said Condition specified between the said *J. R.* and *J. A.* and the said *W. B.* according to the Form and Effect of that Condition: And this he is ready to verify: Wherefore he prays Judgment, if the aforesaid *W.* ought to have or maintain his said Action thereof against him.

Bonds, &c.

And the said *W. B.* saith, That he for any Thing before alledged ought not to be barred from having his said Action, because he saith, That after the making of the Writing obligatory aforesaid, and before the said 23d Day of *October* in the said Condition above specified, to wit, on the 14th Day of *September* in the Year of our Lord 1711, at *H.* aforesaid, he the said *F. D.* taking on himself the Burden of the said Arbitrament of and concerning the Premisses in the said Condition above specified, made his certain Award of and concerning the same Premisses in Writing under his Hand and Seal, bearing Date on the same Day and Year; By which said Writing reciting, *That whereas divers Suits and Controversies had commenced and arisen between the said J. R. of the City of Exon, Grocer, and the said J. A. of the same City, Dyer, in the Condition above named, and Assignees under a Commission of Bankruptcy lately made against J. B. of the same City, Tallow-Chandler, of the one Part, and the said W. B. of the same City, Tallow-Chandler, of the other Part, touching and concerning*

*Replication
showing the*

*Form of the
Award.*

*Recital of the
Case.*

Declarations, &c.

Bonds, &c. concerning the Validity of certain Indentures of Lease and Release, bearing Date on or about the 27th and 28th Days of March 1710, and purporting a Mortgage of certain Premises therein mentioned and made, or mentioned to be made by the said J. B. to the said W. B. to counter-secure himself the said W. B. against a Note given by him W. B. and one Mr. David B. to Mr. William Hull of the said City of Exon, an Attorney at Law, and against three several Writings obligatory, entered into by the said W. B. together with the said J. B. as follow (that is to say) to Abraham Trout of the same City, Merchant, since deceased, in the Penal Sum of 200 l. conditioned for the Payment of 100 l. and Interest; and dated on or about the 14th Day of July 1698, to S. W. of the same City, Widow, in the penal Sum of 200 l. conditioned for the Payment of 100 l. and Interest, on such a Day, &c. and to Anne Pope of the same City, Widow, in the penal Sum of 100 l. conditioned for the Payment of 50 l. &c. as in and by the said Lease and Release, Note under Hand, and the three several Bonds, may more fully, &c. appear; and also touching and concerning divers Goods and Chattels, which the said W. B. had in his Custody, &c. of the said J. B. and whereto the said J. R. and J. A. make claim as Assignees under the said Commission of B. And also reciting, That whereas for the ending of all the Matters in Difference, they the said J. R. J. A. and W. B. had by their several Writings obligatory dated, &c. and the Conditions of the same, nominated, &c. the said F. Drew, Arbitrator, to arbitrate, &c. of and concerning all and all, &c. (and referring thereto;) And also reciting, That whereas be the said Francis Drew had accepted

The Matters
awarded.

cepted and taken on himself the Determination Bonds, &c. of the said Controversies, and having heard and weighed the Allegations and Reasons of all the said Parties, had thereupon awarded, ordered and adjudged, as follows, to wit, that the said J. R. and J. A. should within one Month after Date of the said Award, pay the said Sum of 100 l. and Interest, to the said S. Wooton; And also the said Sum of 50 l. and Interest, to the said Anne Pope. And as to the 100 l. and Interest due by the above mentioned Writing obligatory to Abraham Trout deceased, and since his Death, to J. P. his Executor, he awarded, that that Debt should stand as it stood before such Mortgage, and as if such Mortgage had never been; And that the said W. B. should within six Days after the Date (Delivery) of the said Award, deliver the said Indenture of Mortgage to the said J. R. and J. A. or to one of them, to be cancelled; and that W. B. should within the same Month pay, or cause to be paid to the said J. R. and J. A. the Sum of 15 l. for Goods which they had in their Hands, which were J. B.'s, and for Costs of a Suit between the said J. R. &c. touching the same Goods. And further, That the said Suit, and all other Causes and Controversies between the said J. R. &c. should cease and be determined, &c. And he the said W. B. Protestando, protesting that they the said J. R. and J. A. or either of them have not performed any thing whatsoever of the said Premisses in the said Award contained, on their Parts to be performed, in Fact saith, That they the said J. R. and J. A. or either of them, within one Month after the making and Delivery of the said Award, have not nor hath paid to the foresaid S. Wooton the foresaid Sum of 100 l. and

Note.

Protestando.

Averment.

Bonds, &c.

and the Interest thereof due to her as aforesaid; nor have they the said *J. R.* and *R.* nor hath either of them, within two Months after the Date of the same Award sufficiently indemnified, &c. the said *W. B.* against the said Writing obligatory of the said *S. W.* according to the Form and Effect of the Award aforesaid: And this he is ready to verify: Wherefore he prays Judgment, and that his Debt aforesaid, together with his Damages by Occasion of the Detention of that Debt, may be adjudged to him.

Rejoinder.

And the said *J. R.* saith, That after the making of the Award, *he paid to the said S. W.* the said 100 *l.* and all the Interest then to her due, *to wit,* at *H.* aforesaid in the County of *D.* aforesaid: And this he is ready to verify: Wherefore he prays Judgment, and that the aforesaid *W.* may be barred from having his said Action against him the said *John.*

Demurrer.

And the aforesaid *W. B.* saith, That the said Plea of the aforesaid *J. Rood* above by rejoining pleaded, and the Matter in the same contained, are insufficient in Law to bar him the said *W.* from having his said Action against the said *J.* and he hath no Need, nor is he by the Law of the Land bound to answer to that Plea, in Manner and Form aforesaid pleaded: And this he is ready to verify: Wherefore for want of a sufficient Plea of the said *J. R.* in this Particular, he the said *W.* prays Judgment, and his said Debt, together with Damages by Occasion of the Detention of that Debt, to be adjudged to him, &c. And

In Debt on

365

Bail-
Bonds.

Causes of De-
murrer.

And for Causes of Demurrer in Law, he the same *W.* according to the Form of the Statute in such Case made and provided, shews to the Court here, and saith, That the said *J.* by his said Rejoinder doth not shew or alledge, that the aforesaid *J. R.* did within one Month after the making of the said Award, pay to the said *S. W.* the said Sum of 100*l.* and the Interest thereof due to her: Nor doth he the said *J.* shew when he paid the said Sum of Money, or the Interest thereof, to her the said *S.* And that the said Rejoinder of the said *J.* is a Departure from his said Plea above pleaded in Bar; and that the said *J.* hath not concluded his said Rejoinder to the Country, as in this Case he ought to have concluded that Plea.

Note.

And note; on the Defendant's joining in the Demurrer, the Cause was argued in C. B. June the 9th 1716, and Judgment for the Plaintiff. See also the Cases of *Prideaux* against *Robins*, Trin. 1 Geo. 1. in C. B. and *Clark* against *Winkworth*, Hill. 3 Geo. 1. in C. B. the like Declarations and Judgments on Demurrer; and the like of *Newcombe* against *Newcombe*, Trin. 2 Geo. 1. and *Franks* and *Eastland*, Tr. Geo. 1.

Declaration in Debt by the Assignees of a Bail-Bond.

Dorsetshire, to wit. **W**. T. late of In C. B.
County aforesaid, Esq; otherwise called *W. T.* By Assignees
of the Town of *N.* in the County of *M.* Esq; Trin. 3 Geo.
was summoned to answer to *R. T.* and *A. B.* 1.
Assignees

* i. e. Stat.
4 Annæ, c. 16.
For Amend-
ment of the
Law.

Recital of the
Latitat.

Arrest and
Bail.

Declarations, &c.

Assignees of *W. J.* Esq; late Sheriff of the County aforesaid, Esq; according to the Form of the Statute * in such Case lately made and provided, of a Plea, That he render to the said *R.* and *A.* 600*l.* which he owes to him, and unjustly detains; and whereupon they the said *R.* and *A.* by *H. S.* their Attorney say, That whereas one *P. C.* Esq; after the first Day of *Trinity* Term in the Year of the Lord 1706, *to wit*, on the sixth Day of *November* in the third Year of the Reign of our Sovereign Lord *George*, now King of *Groat Britain*, at *M.* in the County aforesaid was arrested at the Suit of them the said *R.* and *A.* by Virtue of a certain Writ of our said Lord the King of *Latitat*, before that Time sued out of the Court of our said Lord the King, before the King himself, being then at *Westminster* in the County of *M.* and directed and delivered to the said Sheriff. By which said Writ the said Sheriff was commanded to take the said *P. C.* and keep him safely, so that the same Sheriff should have his Body before our said Lord the King, at *W.* on *Tuesday* next after the Morrow of *All Souls* then next, to answer to the said *R.* and *A.* of a Plea of *Trespas* on the Case; and also to a Bill of them the said *R.* and *A.* Executors of the Testament of *T. S.* deceased against him the said *P.* for 300*l.* of Debt according to the Custom of the said Court of our said Lord the King, before the King himself to be exhibited. And whereas he the said *W. J.* being then Sheriff of the said County of *M.* as aforesaid, did then and there take Bail for the Appearance of him the said *P.* in the Form following, *to wit*, He the said

In Debt on

367

Bail-
Bonds.

and the said *W. T.* and one *W. P.* as Sureties for him the said *P.* on the sixth Day of *November* in the aforesaid third Year of the Reign of our said Lord the now King, at *M.* aforesaid in the said County of *M.* by their Writing obligatory acknowledged themselves, and every of them did thereby acknowledge himself to be held and firmly bound to the said *W. J.* then Sheriff of the said County of *M.* by the Name of *W. J.* Esq; Sheriff of the County of *M.* in the said 600 *l.* to be paid to the said Sheriff or his Assigns, when he should be thereto required; with a Condition to the same Obligation subscribed, That if the said *P. C.* should appear before our Lord the King at *Westminster* on the said *Tuesday* next after the Morrow of *All-Souls*, to answer to the said *R.* and *A.* of a Plea of *Trespas*, and also to the Bill of them the said *R.* and *A.* as Executors of the Testament of the said *T. S.* deceased, for 300 *l.* of Debt, that then that Obligation should be void, &c. as by the said Writing obligatory and Condition, Relation being thereto had, may more fully appear; and he the said *P.* did not appear before our said Lord the King, at *Westminster* aforesaid, on *Tuesday* next after the Morrow of *All-Souls*, in the Condition aforesaid mentioned, according to the Form and Effect of that Condition, whereby that Writing obligatory became forfeited; and on the twenty-ninth Day of *November* in the Year of the Lord 1716 he the aforesaid *W. J.* being then Sheriff of the County of *M.* aforesaid, at *M.* aforesaid, at the Instance of them the said *R.* and *A.* the Plaintiffs in that Suit, assigned to them the said *R.* and *A.* the same Writing obligatory,

Bail-Bond.

*The Sheriff's
Assignment.*

Bail-
Bonds.

tory, according to the Form of the said Statute in such Case lately made and provided, by indorsing that Assignment upon the said Writing obligatory, under his Hand and the Seal of his said Office of Sheriff of the said County of *M.* in the Presence of two credible Witnesses. By reason of which said Premises made according to the Form of the said Statute in such Case lately made and provided, an Action hath accrued to them the said *R.* and *A.* as Assignees of the said *W. J.* to demand and have of the said *W. T.* the said 600*l.* yet he the said *W. T.* though often thereto requested, hath not paid the said 600*l.* to the said *W. J.* the said late Sheriff of the said County of *M.* or to the said *R.* or *A.* or to either of them, but hath hitherto wholly refused and still doth refuse to pay the same to them, or to any, or to either of them: Wherefore they say, that they are injured, and have Damage to the Value of 20*l.* And thereupon they bring their Suit. And they the said *R.* and *A.* bring here into Court, as well the Writings obligatory aforesaid, as the Indorsement aforesaid, which do testify the said Debt, and the Indorsment aforesaid, whose respective Dates are on the Days and in the Years above specified.

Profert of the
Sheriff's Bond,
&c.

To this Declaration was a special Demurrer assigning these Causes, viz.

Causes of De-
murrer.

That it is not alledged in the said Declaration, that the said Bail was taken upon the said Writ; and that it is not alledged in Fact in the same Declaration, That any Writing obligatory was made, but only argumentatively:

tively; And also that it is not aver'd, that the Plea in the Condition aforesaid mentioned, and the Plea (Suit) in the Writ aforesaid mentioned, is one and the same Plea, and also that the Names of the Witnesses to the Assignment of the Writing obligatory aforesaid, are not mentioned in the said Declaration, &c.

Bail-
Bonds.

Tocket & al.
vers. Tho-
mas.

But notwithstanding these Causes I find Judgment was for the Plaintiff, November the 14th 1717. And the same Day the like Judgment was given in another like Case (i. e. Tocket & al. vers. Cecil) on the like Demurrer. And in Hilary Term following, (i. e. 7 Feb. 1717. in the Case of Bailey vers. Stock & al.) where the Cause of the Demurrer is, That it doth not appear by the Declaration in what County the Bail was taken, on the said Taking and Arrest, nor in what County the Writing obligatory (i. e. the Bail-Bond was made, nor in what County the Venue was laid; yet Judgment for the Plaintiff.

Tocket & al.
vers. Cecil.

See 1 Leon.

72.

2 Brown.

239.

A Declaration, &c. on a Bail-Bond, where the Action is brought by the Sheriff in his own Name; and the Defendant pleads, that the Bond was not taken by Colour of his Office, according to 23 H. 6. cap.

London, to wit. **G**. W. late of the Borough of Warwick in the County of Warwick, Gentlemen, otherwise called, (&c. as in the Bond) was summoned to answer to W. D. Esq; Sheriff of the same County of W. of a Plea, that he render

In B.C.

On a Bail-
Bond by the
Sheriff in his
own Name.

B b

to

Declarations, &c.

to him 80 l. which he owes to him, and unjustly detains; and whereupon the said *W.* by *T. C.* his Attorney, saith, That whereas he the said *G.* on the 28th Day of *April* in the second Year of the Reign of the Lord the now King, at *London, to wit,* in the Parish of the *St. Mary le Bow* in the Ward of *Cheap*, by his certain Writing obligatory, had acknowledged himself to be held to the said *W.* in the said 80 l. to be paid to the same *W.* when he should be thereto required; yet he the said *G.* although often required, hath not yet paid the said 80 l. but hath hitherto wholly refused, and still doth refuse to pay the same to him: Wherefore he saith that he is injured, and hath Damage to the Value of 20 l. And thereupon he brings this Suit, &c. and produces the Bond (*&c. as usual.*)

The Plea.

Oyer, &c.

And the aforesaid *G.* by *W. S.* his Attorney, comes, and (*without a Defence, which here seems the most proper Way*) prays Oyer of the said Writing obligatory; and it is read to him: He also prays Oyer of the Condition of the same Obligation; and it is read to him in these Words, *to wit, (originally in Latin)* *The Condition of this Obligation is such, That if the above bounden G. W. shall appear before the Justices of the said Lord the King at Westminster, on the Morrow of the Lord's Ascension, to answer to Fr. Hole, of a Plea of Trespass on the Case, upon an Assumpsit, to the Damage of him Francis 40 l. That then this present Obligation to be void, and of no Force, or else to stand and remain in its full Force and Virtue.* Which being read and heard, the same *G.* saith, That he by Virtue of the said Writing obligat-

obligatory ought not to be charged with the Debt aforesaid, because he saith, That in a Statute made at a Parliament of the Lord Henry the Sixth, late King of England, held at Westminster in the County of Middlesex, on the 25th Day of February in the 23d Year of his Reign, it was among other Things enacted by Authority of the same Parliament, *to wit*, (Sheriffs, Under-Sheriffs, Sheriffs or Under-Sheriffs Clerks, &c. not to take any thing by Colour of their Office, besides the Fees there appointed; and also not to take, or cause to be taken, any Bond or Obligation by Colour of his Office, but according to the Form therein prescribed. (See the Act) as by the same Act may among other Things more fully appear. And he the said J. saith, That after the making and publishing of the said Act, *to wit*, at the Time of the making of the said Writing obligatory, he the said W. D. Esq; was Sheriff of the said County of W. And that neither he the said W. D. nor any Deputy or Servant of him the said W. D. had at the Time of the making of the said Writing obligatory, or at any Time before the making of the said Writing obligatory, received, or had any such Writ or Process against him the said G. W. at the Suit of the said F. H. as in the said Condition of the said Writing obligatory is above-mentioned; And that he the said W. D. did at London aforesaid, in the Parish and Ward aforesaid, being then and there Sheriff of the said County of Warwick, take the said Writing obligatory of him the said G. by Colour of the said Office of him the said W. D. as Sheriff of the said County of Warwick; but not by the Name of the Office of him the said W. D. Esq; She-

Note,

**Ball.
Bonds.**

riff of the said County of *W.* against the Form of the said Statute: And this he the said *G.* is ready to verify: Whereof he prays Judgment, if he by Force of the said Writing obligatory ought to be charged with the Debt aforesaid.

Replication.
The Plaintiff prays that the Bond may be inrolled.

**The Form of
the Bond.**

And upon this (hereupon) he the said *W.* *D.* prays, That the said Writing obligatory brought here into Court, the Condition whereof is above specified may be inrolled, and it is inrolled in these Words, *Noverint universi per presentes nos Georgium Webb de Burgo Warwici in Com. Warw. Gent. Johannem Traver de Burgo predict. Ar. & Johannem Fairfax de Burgo pred. Mercer, teneri & firmiter obligari Willhelmo Dixwell, Ar. vic. Com. predict. in octogint. Libris bonæ & legalis Monetæ Magnæ Brit. solvend' eidem Willielmo aut suo certo Attornato, Executoribus, Administratoribus vel Assign' suis, ad quam quidem solutionem bene & fideliter faciend' obligamus nos & quemlibet nostrum per se pro toto & in solido, Heredes, Executors, & Administratores nostros, & cujuslibet nostrum firmiter per presentes sigillis nostris sigillat' Dat. 28^{vo}. die Aprilis, Anno Regni Dni. Georgii Dei Gra. Mag. Brit. &c. Reg. &c. Ann. Dom. 1716.* Which Obligation being so in-

**The issuing of
the Testatum
Capias.**

rolled, he the said *W.* saith, That he, for any thing before alledged, ought not to be barred from having his Action aforesaid, because he saith, That in *Easter Term* in the second Year of the Reign of our Lord the now King, a Writ of our said Lord the now King, called a *Testatum Capias*, issued out of the Court of our said Lord the now King of the Bench here, being at *W.* in the County of *Middlesex*, directed

directed to the then Sheriff of the County of *Warwick*, he the same *W.* being at the Time of issuing the same Writ, and before, and until, and after the Return of that Writ, Sheriff of the said County of *Warwick*; by which said Writ our said Lord the now King, commanded him the said then Sheriff of the said County of *Warwick*, That he should take the said *G. W.* if, &c. and keep him safely, so that he might have his Body before the Justices of the said Lord the now King of the Bench here at *Westminster*, on the Morrow of the Ascension of our Lord in the same Term, to answer to *Francis Hole* of a Plea of Trespass on the Case upon Promise, to the Damage of him the said *Francis* 40 *l.* and that the same Sheriff should then have there that Writ; Which said Writ of *Testatum Capias*, afterwards, and before the Return thereof, to wit, on the 28th Day of *April* in the second Year aforesaid, was delivered to the said *W.* the then Sheriff of the said County of *Warwick*, to be executed in due Form of Law, which said Writ he the said Sheriff then received and had, and by Virtue of that Writ he the aforesaid *G.* on the said 28th Day of *April* aforesaid, was arrested by the same *W.* being then Sheriff of the said County of *W.* and for the Appearance of him the said *George*, according to the Intention and Demand of the said Writ, he the said *W.* afterwards, to wit, on the said 28th Day of *April* in the second Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, being then Sheriff of the said County of *Warwick*, took the said Writing obligatory of the said *G.* by Colour of his the said *W.*'s Office of Sheriff of the said

Not said when
he received it:

**Bail-
Bonds.**

County of *Warwick*, in Manner and Form as by the same Writing obligatory so inrolled as aforesaid may more fully appear: And he prays, That this may be inquired of by the Country.

Demurrer.

And the said *George* saith, That the Plea of the said *W.* above by replying pleaded, and the Matter in the same contained, in Manner and Form aforesaid pleaded, are not sufficient in Law for him the said *W.* to have his Action to be maintained against him the said *George*, and that he hath no need, nor is he bound by the Law of the Land in any Manner to answer to that Plea: And this he is ready to verify: Wherefore for Default of a sufficient Replication of the said *W.* in this Particular, he the said *George*, *as before*, &c. prays Judgment, and that the said *W.* may be barred from having his said Action against him the said *G.* And for Causes of Demurrer in Law in this Particular, he the said *George*, according to the Form of the Statute in such Case lately made and provided, shews and demonstrates to the Court here these that follow, *to wit*, *In that*, That it does not appear by the said Plea above in replying pleaded by the said *W.* nor is it therein alledged, That the said *W.* Sheriff of the said County of *Warwick*, arrested the said *G.* by Virtue of the said pretended Writ of *Testatum Capias* within the said County of *W.* &c. and for that by the said Declaration it plainly appears, that the said *W.* Sheriff of *Warwick* aforesaid, took the said Writing obligatory at *London* aforesaid, in the Parish and Ward aforesaid, without the said County of *Warwick*, and the Bailiwick

Note.

Note.

Bailiwick of the said Sheriff, and for that, that by the Confession of the said *W.* by his Plea above in replying pleaded it plainly appears to the Court here, that he the said *W.* took the Writing obligatory aforesaid of him the said *G.* by Colour of the Office of him the said *W. D.* Sheriff of the County of *Warwick* aforesaid, in Manner and Form as he the said *W.* hath by replying above alledged.

Note.

Note; On the Plaintiff's joining in Demurrer, this Cause was argued on Monday the 26th of Nov. 1716. But the Court being still doubtful, ordered it to be further argued in the following Term.

Quære what was the Event?

A Declaration in Debt on an Obligation, brought by Administrators against the Obligor.

Wiltshire, to wit. **R.** *Towns*, late of *Steepleton* in the County of *Dorset*, Esq; otherwise called *R. F.* of *T.* in the County of *D.* Esq; was summoned to answer to *R. Woodford*, Gent. and *E.* his Wife, and to *R. D. Spinster*, and *K. D. Spinster*, which said *E. R.* and *K.* were duly and lawfully constituted Administrators of all the Goods and Chattels which were of *E. D.* Esq; at the Time of his Death, who died intestate, &c. of a Plea that he render to them 2000 *l.* which he unjustly detains from them; and whereupon they the said *R. W.* and *E. R.* and *K.* by *W. M.* their Attorney, say, That whereas he the said *R. Towns*, such a Day, Year and

In C.B.
By Administrator, &c.
against the
Obligor.
Trin. 3 G. 1.

Note.

*By Admini-
strators.*

Place in the said County of *W.* by his certain Writing obligatory acknowledged himself to be held and firmly bound to the said *E.* in his Life in the said 2000 *l.* to be paid, &c. yet he the said *R. F.* had not paid the said 2000 *l.* to the said *Edward* in his Life, or to the said *Richard Woodford* and *Eliz.* and *R.* and *K.* or to any or either of them, since the Death of the said *Edward*, to which said *Eliz.* and *R.* and *K.* the Administration of all the Goods and Chattels which were of the said *Edw.* at the Time of his Death, were after the Death of the said *Edw.* committed by *W.* by Divine Providence Archbishop of *C.* Primate and Metropolitan of all *England*, on, &c. at, &c. But though often required, hath wholly refused to render the same to, and unjustly detained the same from the said *E.* in his Life, and the said *R. W. E. R.* and *K.* since his Death, and still doth refuse to render the same to them the said *R. W. E. R.* and *K.* and all and every of them: Wherefore they say, that they are injured, and have Damage to the Value of 10 *l.* And thereof they bring their Suit: And they also bring here into Court as well the said Writing obligatory aforesaid, testifying the said Debt in the Form aforesaid, which is dated the Day and Year abovesaid, as also the said Letters of Administration of the said Archbishop, which testify the Commission of the said Administration in the Form aforesaid.

*Proferet the
Bond and Let-
ters of Admini-
stration.*

Plea.

To this (after Oyer of the Bond and Condition) the Defendant pleads, That he had paid 1000 *l.* to the Testator in his Life-time, in full Discharge of the said 2000 *l.* which he
the

the said Testator accepted, and gave the Defendant an Acquittance for the same, &c. But this Plea was adjudged Nugatory, and therefore Judgment was for the Plaintiff, Nov. the 15th 1717.

Executors.

A Declaration in Debt on Bond by a Husband and Wife Executrix of the Obligee.

London, to wit. **D.** H. late of London, In C. B.
 called D. H. Citizen and Upholster, otherwise By a Husband
 and his Wife
 an Executrix.
 don, was summoned to answer to C. M. and
 A. his Wife, Executrix of the Testament of
 W. C. of a Plea, That he render to them Note.
 1000 l. which he unjustly detains; and where-
 upon they the said C. and A. by J. G. their
 Attorney say, That the said D. in the Life
 of him the said W. to wit, on, &c. at, &c.
 and by his Writing Obligatory acknowledged
 himself to be bound to the said W. in the said
 1000 l. to be paid to him when he should be
 thereto afterwards required; yet he the said
 D. though thereto often required, did not
 render that Sum to the said W. in his Life-
 time, or to the said C. and A. or to either of
 them since his Death, but hath hitherto re-
 fused, and still doth refuse to render the
 same, and unjustly detains the same from the
 said C. and A. And thereupon they bring
 this Suit, &c. And they the said C. and A. Profer of the
 Bond and Let-
 ters Testamen-
 tary.
 bring here into Court as well the said Wri-
 ting Obligatory, testifying the said Debt in
 Form aforesaid, the Date whereof is on the Day
 and Year aforesaid, as also the said Letters
 Testamen-

Executors

Testamentary of the said *W.* whereby it sufficiently appears to the Court here, that the said *Anne* is Executrix of the said Testament, and has the Administration thereof.

A Declaration in Debt on a Bond against an Executrix.

In C. B.
Debt against
an Executrix.
Trin. 4 G. 1.

Leicestershire, to wit. **E** *Lizabeth Barker*, late of G. in the County aforesaid, Widow and Executrix of *W. B.* her late Husband deceas'd, lately called *W. B. &c.* [as in the Bond] was summoned to answer to *V. P.* of a Plea, that she render to him 140*l.* which she unjustly detains, &c. and whereupon the said *V. P.* by *J. S.* his Attorney saith, That whereas he the said *W. B.* deceased, in his Life-time, to wit, on the 10th Day of *October* in the first Year of the Reign of our Lord the now King, at *L.* in the County aforesaid, by his certain Writing Obligatory had acknowledged himself to be bound to the said *V. P.* in the said 140*l.* to be paid to the said *V. P.* when he should be thereto required, yet he the said *W. B.* deceased, in his Life-time, or the said *E. B.* his said Widow and Executrix since his Death, though often required, have not paid, &c. (*vide ante*) with a Profert of the Bond.

Plea Nil debet.

And the aforesaid *Elizabeth* by *T. N.* her Attorney, comes and defends the Force and Injury, when, where, &c. and saith, That he the said *W. B.* did not in his Life owe the said 140*l.* to the said *V. P.* nor any Penny thereof, in Form as the said *V. P.* hath above declared.

In Debt (by an Attorney)

379

declared, and hereof she the said *Elizabeth* Against an
puts herself on the Country, &c. Heir.

To this there was a general Demurrer, &c.
and thereon Judgment for the Plaintiff, Nov.
18th 1718.

*A Declaration in Debt on a Bond brought
(by an Attorney) against the Heir and
Devisees, who plead Nothing by Descent,
&c.*

Nottingham- F. *Armstrong*, late of *H.* in In C. B.
Town, to wit. the County of *Northum-* Debt on Bond
berland, Gent. Son and Heir of *J. A.* Gent. against the
lately called *J. A.* of *H.* &c. as in the Bond, Heir and De-
and *R. Hutton*, late of *P.* in the County of visees.
Cumberland, Esq; *J. Aynefly*, late of *H.* in Hill. 3 G. 1.
the aforesaid County of *Northumberland*, Gent. Rot. 671.
F. B. late of *H.* in the said County of *N.* by an Attor-
Gent. Devisees of the said *J. A.* of certain ney.
Tenements and Hereditaments, which were
of the same *J. A.* at the Time of his Death,
were summoned to answer to *Henry Morris*,
Gent. one of the Attorneys of the Court of
our Lord the now King of the Bench (at
Westminster) of a Plea, That they render to
him 500*l.* which they owe to him, and un-
justly detain [2.] And whereupon he the
said *H.* in his proper Person saith, That
whereas the said *J. A.* the Father of the said
R. (whose Heir the said *F.* is) in his Life, to
wit, on the 13th Day of *April* in the 8th
Year of the Reign of the Lady *Anne*, late
Queen of *Great Britain*, at the said Town of
Nottingham in the County of the said Town
of

Against an of *Nottingham*, by his certain Writing Obligatory acknowledged himself to be held and firmly bound to the said *H.* in the said 500*l.* to be paid to the said *H.* when he the said *J. A.* should be thereto required; and for the said Payment well and faithfully to be made, he the said *J. A.* by the said Writing Obligatory bound himself and his Heirs; yet he the said *J. A.* in his Life, or they the said *F. A. R. H. J. A. T. M.* and *T. B.* (to which said *R. H. J. A. T. M.* and *T. B.* and to their Heirs, he the said *J. A.* by his last Will in Writing, made at the Town of *N.* aforesaid, had in his Life, to wit, on or about the 25th Day of *March* in the Year of our Lord 1692, bequeathed and devised his Lands, Tenements and Hereditaments after his Death) though often requested by the said *H.* to wit, on, &c. at, &c. have not rendered, nor hath any of them rendered the said 500*l.* to the said *H.* but they and every of them have wholly refused, and hitherto do refuse to render the same to him: Wherefore he saith, That he is injured, (Damages only 120*l.* and no *Profert*, &c.)

*The Heir
pleads Riens
per Descent.*

And the said *F. A.* by *J. M.* his Attorney comes and defends the Force and Injury when, &c. and saith, That he ought not to be charged with the said Debt, as Son and Heir of the said *J. A.* deceased, by Virtue of the said Writing, because he saith, That he hath no Lands or Tenements by Hereditary Descent from the said *J. A.* his Father in Fee-simple (or otherwise) or which should have descended to the same *F.* in Fee-simple (or otherwise) from the said *J. A.* his Father

In Debt (by an Attorney)

381

nor had (he any such Lands or Tenements) Against an Heir.
 on the Day of suing out the Original Writ
 of the said *H.* nor at any Time afterwards :
 And this he is ready to verify : Wherefore
 he prays Judgment, if he ought to be charged
 with the said Debt by Virtue of the Writing
 aforesaid.

And the aforesaid *R. H. J. A.* and *T. M.* *The Devisees*
 and *T. B.* by *G. W.* their Attorney, come and *plead Quod*
 defend the Force and Injury, when, &c. and *non Devisa-*
 say, That the said *H. M.* ought not to have *vit. Q.*
 his Action thereof against them, because they
 say, That the said *J. A.* deceased, did not
 by his last Will in Writing devise or be-
 queath to them the said *R. H. J. A. T. M.*
 and *T. B.* or to any of them, any Lands,
 Tenements, or Hereditaments of him the
 said *J. A.* as he the said *H. M.* hath above
 declared against them : And this they are ready
 to verify : Wherefore they pray Judgment,
 if he the said *H. M.* ought to have his said
 Action against them.

And the said *H. M.* as to the said Plea of *Replication,*
 the said *F. A.* above pleaded in Bar saith, *quoad F's*
 That he for any Thing by him the said *F.* in *Plea, That he*
 the same Plea alledged, ought not to be *had by Descent*
 barred from having his said Action against *Issu thereon.*
 him the said *F.* because he saith, That on the
 Day of suing out the Original Writ of the
 said *H.* to wit, on the first Day of *February*
 in the first Year of the Reign of our Lord
 the now King, he the said *F.* had divers
 Lands and Tenements by Hereditary De-
 scent from the said *J. A.* his Father in Fee-
 simple, to wit, at the Town of *Nottingham*
 aforesaid : And he prays that this may be in-
 quired

Against an quired of by the Country; and the said P.
Heir. doth so likewise, &c.

And quoad
the Devisees,

That the Te-
stator Devisea-
vit.

And he the said *H. M.* as to the Plea of the said *R. H. J. A. T. M.* and *T. B.* above pleaded in Bar, saith, That he for any Thing by them in the same Plea alledged, ought not to be barred from having his said Action against them the said *R. J. F. T.* and *T.* because he saith, That the said *J. A.* did by his last Will in Writing devise to them the said *R. H. J. A. T. M.* and *T. B.* certain Lands, Tenements and Hereditaments of him the said *J. A.* as he the said *H. M.* hath above declared against them: And he prays that this also may be inquired of by the Country.

The Devisees
demur, &c.

And they the said *R. J. T.* and *T.* say, That the Plea of the said *H.* above by replying pleaded, and the Matter therein contained, are not sufficient in Law, for him the said *H.* to have and maintain his said Action thereupon against them the said *R. J. T.* and *T.* whereto they the said *R. J. T.* and *T.* have no Need, nor are they bound by the Law of the Land in any Manner to answer. And this they are ready to verify: Wherefore for Default of a sufficient Replication in this Particular, they the said *R. J. T.* and *T.* pray Judgment as before, and that he the said *H.* may be barred from having his said Action therefore against them the *R. J. T.* and *T.*

Joinder.

And the aforesaid *H.* in that he hath alledged sufficient Matter in Law in his said Plea above in replying pleaded, for him the said

In Debt (by an Attorney).

383

said *H.* to have his said Action to be maintained against them the said *R. J. T.* and *T.* as he is ready to verify, (which said Matter they the said *R. J. T.* and *T.* do not deny, nor any way answer thereto, but do altogether refuse (waive) the Verification thereof) therefore as before, he prays Judgment against them the said *R. J. T.* and *T.* and his said Debt, together with his Damages, to be adjudged to him, &c. And because the Justices here will advise themselves of and concerning the Premises, whereof he the said *H. M.* and the said *R. J. T.* and *T.* have above put themselves in Judgment of the Court here, before they render Judgment thereof, a Day is thereof given to the same Parties here, until from the Day of *Easter* in 15 Days, for hearing their Judgment thereof; because the said Justices here are not yet advised thereof, &c.

Against an Heir.

Cur. Advise, &c.

Continuance.

And as to the Trial of the said Issue between him the said *H.* and the said *F. A.* above joined to be tried by the Country, the Sheriff is commanded, That he cause to come here at the same Time twelve free and lawful Men, &c. who neither, &c. (as usual in awarding *Venires.*) And it seems, That on Trial of the Issue a Verdict and Judgment was for the Plaintiff. See *Cro. Car.* 219.

A Venire awarded to try the Issue.

Note; *The Form of a Venire for a Trial is thus:*

George the Second, by the Grace of God, Form of a Venire.
of Great Britain, France and Ireland King,
Defender of the Faith, &c. To the Sheriff of N. greeting: We command you, That
4 you

Against an *Writ.* you cause to come before us at *Westminster*,
 on *Wednesday* next after 15 Days of *Easter*,
 &c. [if in C. B. before our Justices of the
 Bench at *W.* from the Day of *Easter* in 15
 Days,] twelve free and lawful Men of the
 Body of your County, each whereof hath 10 l.
 of Lands, Tenements or Hereditaments by
 the Year at the least, by whom the Truth of
 the Matter may better be known, and who
 are not related by any Affinity either to *H.*
M. the Plaintiff, or to *F. A.* late of *N.* in thy
 County; to make a certain Jury of the Coun-
 try between the Parties aforesaid, concern-
 ing a Plea in Debt (or as the Case is) because
 as well the same *F. A.* as the said *H.* between
 whom the Contention thereof is, have put
 themselves upon that Jury; and have thou
 then there the Names of the said Jurors,
 and this Writ. Witness Robert Lord Ray-
 mond (or Robert Eyre, Knt.) at *Westminster*,
 such a Day in the sixth Year of our Reign.

*A Declaration in Debt brought by a Dean
 and Chapter for Rent on a Lease for
 Years.*

In C. B.
 On a Lease
 for Rent.
 Pas. 3 G. 1.

London, to wit. **E.** Downes, late of Lon-
 don, Gent. otherwise
 called *E. Downes* of *Gray's Inn* in the Coun-
 ty of *Middlesex*, Gent. was summoned to an-
 swer to the Dean and Chapter of the Cathed-
 ral Church of *St. Paul's London*, of a Plea,
 That he render to them 54 l. which he owes
 to them, and unjustly detains; and where-
 upon they the said Dean and Chapter by *E.*
G. their Attorney say, That whereas they
 the

the said Dean and Chapter of the said Church, on the 27th Day of *Nov.* in the Year of our Lord 1696, at *London* aforesaid, in the Parish of, &c. in the Ward of *Cheap*, by a certain Indenture then and there made between the said Dean and Chapter of the one Part, and the said *E. D.* by the Name of *E. D.* of *Gray's Inn* in the County of *M.* Gent. of the other Part, which other Part of the said Indenture, sealed with the Seal of the said *E. D.* they the said Dean and Chapter bring here into Court, which is dated the same Day and Year, had demised to the said *E.* two third Parts, the whole in three Parts to be divided, of one Mesuage or Tenement, situate and being in *Gray's Inn Lane* in the Parish of *St. Andrew Holbourn* in the County of *Middlesex*, called or known by the Name of the *Pinder of Wakefield*, (&c. with divers other Particulars described as in the Lease) to hold for 21 Years from *Michaelmas* past, &c. yielding and paying therefore yearly during the said Term to the said Dean and Chapter, and their Successors, or to the Chamberlain of the same Church for the Time being, the Rent or Sum of 6*l.* of lawful Money, &c. payable quarterly at, &c. by Virtue of which said Lease he the said *E. D.* entred into the said Tenements and Appurtenances, and hath been possessed thereof for nine Years past, without paying any Rent; and that there is now due from him to the said Dean and Chapter for Rent and Arrears as aforesaid 54*l.* which is still in Arrear and unpaid, whereby an Action is accrued to them the said Dean and Chapter, to demand and have of him the said *E.* the

C c

said

The Lease re-
cited.

Reales.

said 54*l.* yet he the said *E.* though often required, hath not yet rendered the said 54*l.* or any Part thereof to them the said Dean and Chapter, or to the Chamberlain of the same Church, but hath hitherto wholly denied, and still doth deny to render the same to them, or to any of them: Wherefore they the said Dean and Chapter say, they are injured, and have Damage to the Value of 100*l.* And thereupon they bring their Suit, &c.

Plea.

The Defendant pleads Payment for Part, and for other Part *Nil debet*, and Entry, before the Term expired, with divers other Particulars: But on a Demurrer thereto Judgment was for the Plaintiff; *May* the 17th 1717.

A Declaration in Debt on a Judgment, with a Plea of Bankruptcy, after Oyer of the Judgment.

In C. B.
On a Judgment and Oyer thereof.
Hill. 2 Geo. 1.
Rot. 1624.

Middlesex, to wit. **T**. Atkinson, late of Leeds in the County of T. Merchant, was summoned to answer to *W. Lepton*, Gentleman, of a Plea, That he render to him 803*l.* which he owes to him, and unjustly detains; and whereupon he the said *W.* by *T. D.* his Attorney, saith, That whereas he the said *W.* in the Court of her late Majesty *Anne*, late Queen of Great Britain, at *Westminster*, to wit, in *Trinity* Term in the ninth Year of the Reign of the said late Queen, before *Sir Thomas Trevor*, Knt. and his Companions, then Justices of

of the said Lady the then Queen of the Bench here, to wit, at *Westminster*, had by Consideration of the same Court recover'd against the said *T. A.* as well a certain Debt of 800*l.* as 60*s.* which were adjudged to him the said *W.* in the same Court for his Damages, which he had by Occasion of the Detention of that Debt, whereof he is convicted, as by the Record, and the Process thereof, in the Court of the said Lord the now King of the Bench here remaining, may more fully and plainly appear. Which said Judgment remains in full Force and Effect, no way reversed, annulled, or satisfied: And he the said *W.* hath not yet obtained any Satisfaction of that Judgment, whereby an Action hath accrued to the same *W.* to demand and have of the said *Thomas* the said 803*l.* yet he the said *T.* although often requested, hath not yet render'd the said 803*l.* or any Part thereof to the said *W.* but hath hitherto wholly refused, and still doth deny to render the same to him: Wherefore he saith, That he is injured, (*Ec.* Damages to the Value of 10*l.*)

And the aforefaid *T.* by *G. B.* his Attorney, comes and defends the Force and Injury, when, *Ec.* and prays Oyer of the said Judgment; and it is read to him in these Words, to wit, *The second Part of the Pleas with the Warrants of Attorney thereupon, intolled at Westminster, before Sir Thomas Trevor, Knt. and his Companions, Justices of our Lady the now Queen of the Bench, to wit, In the Term of the Holy Trinity in the ninth Year of the Reign of our Sovereign Lady Anne,*

Defendant
prays Oyer of
the Judgment:
Recital of the
Judgment.

G e z

by

Judgments. by the Grace of God, Queen of Great Britain, &c. Roll 1453. *Yorkshire, to wit, T. A.* late of *Leeds* in the County aforesaid, Merchant, was summoned to answer to *W. Lepton*, Gentleman, of a Plea, that he render to him 800*l.* which he owes to him, and unjustly detains; and whereupon he the said *W.* by *T. D.* his Attorney saith, That whereas the said *T.* on the first Day of *June* in the ninth Year of the Reign of our Lady *Anne* the now Queen, at *L.* in the County aforesaid, had borrowed of the said *W.* the said 800*l.* to be paid to the said *W.* when he should be thereto afterwards required; yet he the said *T.* though often required, hath not yet rendered to the said *W.* the said 800*l.* but hath hitherto wholly refused, and yet doth refuse to render the same to him: Wherefore he saith, that he is injured, and hath Damage to the Value of 20*l.* And thereupon he brings Suit, &c. And the said *T. A.* by *J. M.* his Attorney, comes, and the same Attorney saith, *That he is not informed* by the said *T. A.* his Master, of any Answer for the said *T. A.* to be given to the said *W.* in the Plea aforesaid, and saith nothing further thereupon; whereby he the said *W.* remains against the said *T.* thereof undefended. Therefore it is considered, that the said *W.* recover against the said *Thomas* his said Debt, and also his Damages, by Occasion of the Detention of that Debt, to 60*s.* adjudged by the Court here unto the said *W.* by his own Assent: And the said *T. A.* is in Mercy. Signed 7 *Octob.* 9 *Anne.* Which being read and heard, he the said *T.* saith, That he the said *W.* ought not to have or maintain his said Action

On a Mutu-
tus.

Judgment by
Non sum in-
formatus.

Action thereof against him, because he saith, That the said *T. A.* after the said first Day of *June* (in the Year, &c. aforesaid) to wit, on the first Day of *October* in the second Year of the Reign of our Lord the now King, at *Westminster* aforesaid, became a Bankrupt; and that the Suit or Cause of Action accrued to the said *W.* before the Time wherein he the said *T.* so became a Bankrupt: And this he is ready to verify: Wherefore he prays Judgment, if the said *W.* ought to have or maintain his said Action thereof against him.

Judgments.

Bankrupt
pleaded.

And the aforesaid *W.* saith, That the Plea of the said *Thomas* above pleaded in Bar, is insufficient in Law to bar the said *William*, (*&c. as usual in Demurrer*) And for Causes of Demurrer in Law, according to the Form of the Statute in such Case lately made and provided, he the said *W.* sheweth and demonstrates to the Court here these Causes following, to wit, in that, that the said *T.* hath concluded his said Plea with a Verification of that Plea, where he ought to have concluded it with an Issue to be tried by the Country; and in that, that the said *T.* hath not directly shewn the Time when he first became a Bankrupt, &c.

Demurrer.

Cause of De-
murrer.

On arguing which, Tuesday the 24th of April 1716, Judgment was for the Plaintiff.

Escapes.

A Declaration in Debt against the Marshal of B. R. for an Escape, after a Commitment in Execution on a Habeas Corpus on a Judgment in C. B.

In B. R.
Against the
Marshal for
an Escape af-
ter a Commit-
ment in Exe-
cution.
See Lilly 186.

The Recovery
in C. B.

How
do
you
say
the

Middlesex, to wit, J. S. complains of D. Crawford, Esq; Marshal of the Marshalsea of our Lord the King, before the King himself, being present here in Court in his proper Person, of a Plea, that he render to him 35 l. of lawful Money of Great Britain, which he owes to him, and unjustly detains, for that, to wit, That whereas he the aforesaid J. by the Name of J. S. &c. did heretofore, to wit, in Trinity Term in the fifth Year of the Reign of our Sovereign Lord George, now King of Great Britain, &c. in the Court of our said Lord the King of the Bench at Westminster, before Sir P. King, Knt. and his Companions, then Justices of our said Lord the King of the same Bench, at Westminster, recover against one W. G. late of London, Esq; 35 l. as well for his Damages, which he had sustained by Occasion of not performing of a certain Promise and Undertaking of him the said W. lately made to the said J. as for his Charges and Costs laid out by him about his Suit in that Particular; whereof he the same W. was convicted, as by the Record and the Proceedings thereof remaining in the same Court of the said Lord the King of the Bench doth more fully and plainly appear. And afterwards, to wit, on the 23d Day of December in the sixth Year of the Reign of our said

said Lord the now King, by Virtue of a certain Writ of the said Lord the now King, of *Habeas Corpus cum Causa*, duly issued out of the Court of our said Lord the King, before the King himself, at *Westminster* aforesaid in the said County of *Middlesex*, bearing Date at *Westminster* the 28th Day of *November*, in the fifth Year aforesaid, directed to the then Mayor, Aldermen and Sheriffs of *London*, he the said *W.* was by *J. B. Bart.* and *J. T. Knt.* being then the Sheriffs of *London* aforesaid, brought in Custody before *R. B. Knt.* one of the Justices of the Lord the King, assigned to hold Pleas in the Court of our said Lord the King, before the King himself, at his Chambers situate in *Serjeants-Inn* in *Chancery-Lane*, *London*, in the Parish of *St. Dunstan in the West* in the Ward of *Farringdon Without*, and he the said *W.* then and there was by the Return of the said Writ of *Habeas Corpus* charged among other Things in Execution, at the Suit of him the said *J. S.* for the Damages, Charges and Costs aforesaid: And afterwards, to wit, on the same 23d Day of *December* in the Year last aforesaid, at *London* aforesaid, in the Parish aforesaid, was by the same Justice committed to the Custody of the aforesaid *D. C.* the then and yet Marshal of the of our said Lord the King, before the King himself, charged among other Things in Execution, for the Damages, Charges and Costs aforesaid, as by the Record of the said Writ of *Habeas Corpus* of the said *W.* and the Return thereof, and the Commitment of him the said *W.* in Execution, in the Court of our said Lord the now King, before the King

The Habeas Corpus.

The Commitment thereon in Execution.

To the Marshal of B. R.

Escapes.

The Escape.

Whereby the
Action arises.

himself, at *Westminster*, remaining filed of Record, doth more fully and plainly appear: By Virtue of which said Commitment, he the said *D. C.* being then and yet Marshal of the said *Marshalsea* as aforesaid, did then and there receive and take the said *W.* into his Custody: And by Virtue of the same Commitment held and detained the said *W.* under his said Custody, in Execution for the said Damages, Charges and Costs so recover'd against him by the said *J. S.* as aforesaid; And he the said *W.* being so in Custody of the said *D. C.* the said Marshal of the said *Marshalsea*, in Execution for the Damages, Charges and Costs as aforesaid, he the said *D. C.* afterwards, to wit, on the 24th Day of *December* in the sixth Year of the Reign of our said Lord the now King, he the said *D.* being then and yet Marshal of the said *Marshalsea* as aforesaid, did, at *Westminster* aforesaid in the said County of *Middlesex*, permit and suffer him the said *W. G.* freely and voluntarily to escape and go at large out of the Custody of him the said *D. C.* without the Leave and against the Will of him the said *J. S.* he the said *J. S.* not being then or yet any way paid or satisfied of the Damages, Charges, and Costs aforesaid, or of any Parcel thereof; whereby an Action hath accrued to the same *J.* to demand and have of the said *D. C.* the said 35 *l.* yet he the said *D.* though often requested, &c. hath not yet paid the said 35 *l.* to the said *J.* but hath hitherto refused, and still doth refuse to pay the same to him, *Ad Dampnum*, &c.

Note;

Note; In this Case on the Issue Non Debet, the Plaintiff had a Verdict, and the Marshal paid the Money.

See the like Declarations, &c. against the Warden of the Fleet, &c. Lilly's Entr. 156, 157, 160, 161, &c. Against the Warden of the Fleet, &c.

A Declaration in Debt on the Habeas Corpus Act, for 100 l. against the Gaoler, for denying to a State Prisoner a Copy of his Commitment.

Surrey, to wit. J. F. Gentleman, complains In B. R.
 J. of W. L. being in Custody of the Marshal, &c. of a Plea, That he Against a Gaoler for denying to a State Prisoner a Copy of his Commitment
 render to him 100 l. of lawful Money of Great Britain, which he owes to him, and unjustly detains; for that after the first Day of July in the Year of our Lord 1679, he the said J. F. in the Vacation Time, and out of Term, to wit, on the 20th Day of March in the—
 Year, &c. was at, &c. in the said County of S. taken and detained in Prison by the said W. L. without any lawful Warrant or Commitment (specially expressing the Cause of the said Commitment): And whereas, afterwards, to wit, on, &c. at the Parish aforesaid in the said County of S. he the said J. F. had demanded of the said W. L. a true Copy of the Warrant of his the said J. F.'s Commitment and Detention by him the said W. L. in the said Prison: Yet he the said W. L. tho' often required by the said J. F. did not within the Space of six Hours then next following such

By-Laws.

such Request and Demand, deliver to him the said *J. F.* or to any other to his Use any Copy of the said Commitment and Detention of him the said *J. F.* so in Custody of the said *W. L.* as aforesaid; but did wholly neglect and omit to deliver that Copy to him, against the Form and Effect of the Statute in such Case lately made and provided; whereby, and by Force of the said Statute, he the said *W. L.* hath forfeited 100*l.* for which, by Force of the same Statute, an Action is accrued to the said *J. F.* being the Party grieved, to demand and have of the same *W. L.* the said 100*l.* Yet he the said *W.* tho' often required, had not paid the said 100*l.* or any Part thereof, to the said *J.* but hath hitherto wholly refused, and still doth refuse, &c. *Ad Damnum* 100*l.*

A Declaration in Debt upon a By-Law of the Company of Stationers (for not accepting of the Livery, &c.)

In B.R.
On a By-Law
of the Com-
pany of Sta-
tioners.
See Lilly
153.

Recital of their
Letters Patent
of Incorpora-
tion.

London, to wit. **T**HE Master and Wardens and Commonalty of the Mystery or Art of Stationers of the City of London complain of *J. H.* being in Custody of the Marshal, &c. of a Plea, That he render to them 40*l.* of lawful Money of Great Britain, which he owes to them, and unjustly detains; for that, to wit, That whereas the Lord Philip and the Lady Mary, late King and Queen of England, by their Letters Patent under the Great Seal of England, bearing Date at Westminster on the fourth Day of May in the third and fourth Years of their Reign

By-Laws.

Note.

Reign, had of their special Grace, and of their certain Knowledge and mere Motion, willed, given, and granted for themselves, *and the Heirs and Successors of the said then Queen*, to their beloved and faithful Leiges, *Thomas Dockwray, &c.* Freemen of the Mystery or Art of Stationers of the said City of *London*, and Suburbs of the same, That they for the future should be in Deed, Fact and Name, a Body Politic of itself for ever, and a perpetual Corporate Company of one Master and two Wardens, and Commonalty of the same Mystery or Art of Stationers, of the City aforesaid; and that they should have perpetual Succession: And further, they the said Lord the King, and Lady the Queen, had of their special Grace, and of their certain Knowledge and mere Motion, by the same their Letters Patent, ordained, created, *A Master and Wardens, and Community appointed.* erected, made and constituted the said *T. D.* to be Master of the said Mystery or Art of the Stationers of the said City, during one Year then next following; And the said *John Cowood* and *Henry Cooke* to be Bailiffs or Wardens of the same Mystery or Art of Stationers of the said City for one Year then next following; And the said *William Bonham*, *Richard Way*, &c. to be the Community of the same Mystery or Art of Stationers of the aforesaid City, &c. And further, they the said Lord the King, and Lady the Queen, had by the same Letters Patent ordained, created, erected, made and constituted the said Master, Wardens, and Community, to be in Deed, Fact and Name, a Body Politic for *Vide supra*, ever, and Corporate Company for ever, of one Master and two Wardens, and Commonalty

By-Laws. nalty of the same Myſtery or Art of Stationers of the ſame City of *London*, to endure for ever; and that they the ſaid Maſter and Wardens, and Community, ſhould for the future have perpetual Succeſſion; and that they and their Succeſſors for ever ſhould be called, named, and known by the Name of *The Maſter and Bailiffs, or Wardens, and Commonalty of the Myſtery or Art of Stationers of the City of London*; and ſhould by that Name plead, and be impleaded, answer and be answered in all and ſingular Matters, Suits and Complaints, Actions, Demands and Cauſes before whatſoever Judges and Juſtices, and in whatſoever Courts and Places; and have a Common Seal for the tranſacting and diſpatching of their Affairs, and for the ſealing of all and ſingular their Deeds and Writings, any way touching or concerning their Affairs and Buſineſs. And they the ſaid Maſter, Bailiffs or Wardens, and Commonalty, and their Succeſſors, might from Time to Time make, ordain and eſtabliſh for the good and ſound Rule and Government of the Freemen of the ſaid Art or Myſtery, and of the Company aforeſaid, Ordinances, Proviſions and Statutes, as often as they ſhould think fit and convenient; ſo that thoſe Ordinances, Proviſions and Statutes, were not in any thing repugnant or contrary to the Laws or Statutes of this Kingdom, or to the public Prejudice of the ſame Kingdom; And that they and their Succeſſors for ever might meet or aſſemble together in an honeſt and lawful Manner, for making of ſuch Statutes and Ordinances, and tranſacting other Affairs, to the Profit of the ſaid Myſtery or Art of Stationers, and the Com-

*Their Name
of Incorpora-
tion.*

*Have a Com-
mon Seal.*

*Power to make
By-Laws.*

Commonalty of the same, and for other lawful Causes, as often as they should please, freely and quietly, without any Molestation or Restriction of the said Lord the King, and Lady the Queen, or the Heirs and Successors of the said Lady the Queen, or of any other, as by the said Letters Patent inrolled of Record in the Court of the Chancery of our Lord the now King, at *Westminster* (an Exemplification of which said Inrolment, under the Great Seal of his late Majesty Charles the Second, late King of *England*, &c. bearing Date at *Westminster* on the 23d Day of *October* in the 36th Year of his Reign, they the said Master and Bailiffs, or Wardens, and Commonalty of the said Mystery or Art of Stationers of the City of *London*, do bring here into Court) may more fully and plainly appear. And they the said Master and Bailiffs, &c. do in Fact say, That after the making of the said Letters Patent, and before the exhibiting of this their Bill, to wit, on the 24th Day of *May* in the Year of our Lord 1694. at *London* aforesaid, at the Parish of *St. Martin Ludgate* in the Ward of *Farringdon Within*, they the said Master, &c. being then and there assembled for the good Government of the said Freemen of the said Art or Mystery, and the Commonalty aforesaid, and their Successors, did, among other Things, make and ordain a certain Ordinance, no way repugnant or contrary to the Laws of this Kingdom, nor any way tending to the Prejudice of the Commonwealth of *England*; that is to say, That the Master and Wardens, and Assistants of the said Company, or the major Part of them in the Court of Assistants, to be held

Profect of an
Exemplifica-
tion of the
Letters Pa-
tent.

Note.

The By-Laws
made.

By-Laws.

Note.

A Confirmation thereof.

The Defendant
a Freeman.

held according to the Usage of the same Company, when and as often as they should think fit, might elect and admit such Member and Members of the same Company into the Livery or Cloathing of the said Company, as they should think fit; and that the Person so elected, upon his Admission into the said Livery or Cloathing, should pay to the Master and Bailiffs, or, &c. the usual Sum of 20 l. for such his Admission thereto. And if any such Person so elected into the said Livery or Cloathing as aforesaid, should not upon Notice accept thereof, having no reasonable Cause to refuse it, then he should pay to the said Master and Bailiffs, or, &c. for such his Refusal the Sum of 40 l. of lawful Money of England. Which said Ordinance so made as aforesaid, afterwards, to wit, the 31st Day of May in the Year of the Lord 1694, at London aforesaid, in the Parish and Ward aforesaid, at the Request of the said Master and Bailiffs, or Wardens, and Commonalty of the said Mystery or Art of the Stationers of the City of London, and according to the Tenor of the Ordinance in that Case made and provided, was seen, read and examined, by the Right Honourable Sir John Somers, Knt. then Lord Keeper of the Great Seal of England, Sir John Holt, Knt. then Chief Justice of our said Lord the King, assigned to hold Pleas in the Court of our said Lord the King, before the King himself, and Sir Geo. Treby, Knt. Chief Justice of our said Lord the King of the Bench, at Westminster, and was by them then and there approved, established and confirmed.

And they the said Master and Wardens, and Commonalty of the Mystery or Art of Sta-

tioners

tioners of the City of *London* do in Fact say, That the said *J.* [the Defendant] was after the making of the said Ordinance, and before the exhibiting of this Bill, *to wit*, on the first Day of *May* 1695, and from thence continually afterwards hitherto hath been and still is a Freeman and a Member of the said Company of the Master and Wardens, &c. *to wit*, at *London* aforesaid, in the Parish and Ward aforesaid; And that after the said first Day of *May* in the Year last aforesaid, and before the exhibiting the said Bill, *to wit*, at a Court of Assistants of them the said Master and Wardens, &c. held according to the Usage of the said Company at *Stationers-Hall* in the Parish and Ward aforesaid, on *Monday* the fifth Day of *August* in the Year of the Lord 1695, by *John* the then Master, *W. Rawlins* and *Sam. Lowndes*, the then Wardens, and *Roger Norton*, *Edward Brewster*, &c. the then Assistants of the said Company, being then present and assembled, and being the major Part of the said Master, Warden and Assistants of the said Society, he the said *J. Hunt*, being then and there a Freeman and a Member of the said Society, was, by them the said Master, Wardens and Assistants so assembled in a Court of Assistants, as aforesaid, then and there elected into the Livery of the said Company of the Master and Bailiffs, or Wardens, &c. And although he the said *J. H.* afterwards, *to wit*, on the fifth Day of *October* in the Year of the Lord last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had Notice as well of the said Order, as of the Election aforesaid, and was required by the said Master and Bailiffs, &c. to accept the

By-Laws.

Was summoned to a Court of Assistants.
Q. If not omitted.

And elected into the Livery.

By-Laws. *Which he refused to accept.* the said Livery; yet he the said J. did then and there wholly refuse to accept the same; and did not then accept, nor hath he at any Time since accepted of the said Livery, tho' he the said J. hath not given any reasonable Cause of his Refusal of the said Livery, &c.

Unde Actio. Whereby an Action hath accrued to the said Master and Wardens, &c. to demand and have of the said J. H. the aforesaid 40 l. yet he the said J. H. tho' often required, had not yet paid the said 40 l. to the said Master and Wardens, &c. but hath hitherto denied, and still doth deny, to pay that to them, to the Damage of them the said Master and Wardens, and Commonalty of the Mystery or Art of Stationers of the City of London, 50 l. And thereupon they bring their Suit, &c.

I shall here add only one or two Declarations more in Debt on Publick Laws, which may be chiefly founded on such Statutes, for the Breach of which there is a certain Penal Sum prescribed. The Forms of the Precedents in such Cases may be easily extended in Number, beyond the Statutes themselves; but I am compelled to Brevity, and consequently must omit

A Declaration in Debt on the Stat. 21 H. 8. of Non-Residence.

In B. R.
On the Stat.
at H. 8. for
Non Residence.
Lilly 151.

Devonshire, to wit. R. F. who professes as well for our Lord the King, as for himself, complains of W. C. being in the Custody of the Marshal, &c. (*vide ante*) of a Plea, that he render to our said Lord the King, and to the same R. who

who prosecutes as aforesaid, 70*l.* of lawful Money of Great Britain, which he owes to our said Lord the King, and the said R. (who prosecutes as aforesaid) and unjustly detains; for that, that he the said W. on the first Day of April in the fourth Year of the Reign of our said Lord the now King, and from thence continually afterwards, for the Space of one whole Year then next following, had been and continued a spiritual and beneficed Person, *to wit*, he the said W. during the whole Time aforesaid was and yet is Vicar of the Vicarage of the Parochial Church of M. in the County of S. and beneficed in the same Church; And he the said W. for seven whole Months together concurrent in the same Year, to be computed from the said first Day of May in the Year aforesaid, was not personally resident or abiding, at or upon his said Vicarage (* *nor in, at, or upon any other his Benefices*) but he the said W. for and during the seven Months aforesaid, did wholly and voluntarily altogether absent himself from his said Vicarage, and was not resident on his said Benefice (or any other his said Benefices, Q.) against the Form of the Statute in such Case made and provided: Whereby an Action hath accrued to him the said R. (who prosecutes as aforesaid) to demand and have of the said W. 70*l.* *to wit*, 10*l.* for every Month so absent-ed as aforesaid, against the Form of the said Statute: Yet he the said W. tho' often required, hath not yet paid the said 70*l.* to our said Lord the King, and to the said R. who prosecutes as aforesaid, but hath hitherto altogether refused to pay the same to them; whereupon the same R. who prosecutes as

* Q. The Act
as to those
Words.

Statutes. *aforsaid, faith, that he is injured, and hath Damage to the Value of 20 l. And thereupon he brings this Suit, as well for our said Lord the King, as for himself. Vide ante.*

**Declaration on
Statute a-
gainst Usury.**

Middlesex, to wit, *A.* late of, *Es.* Pawnbroker, was summoned to answer to *C.* who sues as well for the King as for himself in this Behalf, in a Plea, that he render to our Lord the King and the aforsaid *C.* the Sum of 53 l. 11 s. of lawful Money of *Great Britain*, which to them he oweth, and unjustly detaineth, *Es.* and whereupon the said *C.* who sues as well for our said Lord the King as for himself by ——— his Attorney complains, that the said *A.* after the 29th Day of *September* in the Year of our Lord 1714, to wit, on the 10th Day of *September* in the Year of our Lord 1735, at *Westminster* in the County of *Middlesex* aforsaid, upon a certain Contract made after the said 29th Day of *September* in the Year of our Lord 1714, to wit, on the said 10th Day of *September* 1735, at *Westminster*, *Es.* between the said *A.* and one *John Doe*, took, accepted and recieved of and from the said *John Doe* the Sum of 6 s. of lawful Money of *Great Britain* by way of corrupt Bargain for giving Day of Payment to the said *John* from the third Day of *March* in the Year of our Lord 1734 to the said 10th Day of *September* in the Year of our Lord 1735 of 2 l. 2 s. of like lawful Money, upon the said 3d Day of *March*, at *Westminster* aforsaid, lent to the said *John* by the said *A.* which said Sum of 6 s. so took, accepted and received by the said *A.* of the said *John* as aforsaid, is above the Rate of 5 l. for the forbearing of 100 l. for one Year, against the Form

Form of the Statute in such Case made and provided; whereby an Action hath accrued to the said C. who sues as well for our Lord the King as himself, to require and have of and from the said A. for our Lord the King and him the said C. the Sum of 6*l.* 6*s.* 0*d.* Part of the said 53*l.* 11*s.* being the treble Value of the said 2*l.* 2*s.* of the said A. by him lent to the said John as aforesaid: And also that the said A. after the said 29th Day of September in the Year of our Lord 1714, to wit; on the said 10th Day of September in the Year of our Lord 1735, at Westminster aforesaid in the County aforesaid, upon another Contract made after the said 29th Day of September in the Year of our Lord 1714, to wit, on the 18th Day of June 1735, at Westminster aforesaid in the County aforesaid, between the said A. and the said John, took, accepted and received of and from the said John the Sum of 1*l.* 3*s.* 6*d.* by way of corrupt Bargain for giving Day of Payment to him the said John from the said 18th Day of June 1735, to the said 10th Day of September 1735, of the Sum of 15*l.* 15*s.* lent on the said 18th Day of June, at Westminster aforesaid, by the said A. to the aforesaid John; which said last Sum of 1*l.* 3*s.* 6*d.* so took, accepted and received by the said A. of and from the said John in the Manner and for the Cause aforesaid, is above the Rate of 5*l.* for the forbearing of 100*l.* for one Year, against the Form of the Statute in such Case made and provided; whereby an Action hath accrued to the said C. who sues as well for our Lord the King as for himself, to require and have of and from the said A. for our Lord the King and him the said C. the Sum of

Statutes. 47 l. 5 s. Residue of the said Sum of 53 l. 11 s. being the treble Value of the said last mentioned Sum of 15 l. 15 s. of the said *A.* by him lent to the said *John* as aforesaid: Yet the said *A.* (although often required) hath not rendered the aforesaid 53 l. 11 s. or any Part thereof, to our said Lord the King and the said *C.* or either of them, but hath hitherto refused and still doth refuse to render to him the same, to the Damage of the said *C.* who sues as well, &c. 100 l. Wherefore the said *C.* as well for our said Lord the King as for himself brings this Suit, &c.

*A Declaration in Debt on the Stat. 9 Ann.
for preventing Gaming.*

*In B.R.
On the Stat.
9 Ann. c.
for preventing
Gaming.
Lilly 169.*

Middler, to wist. **W**. N. complains of *T. B.* being in the Custody of the Marshal, &c. of a Plea, That he render to him 16 l. of lawful Money of Great Britain, which he owes to him, and unjustly detains; for that, *towit*, That whereas he the said *T. B.* on the 26th Day of May in the 11th Year of the Reign of our Sovereign Lady Anne, now Queen of Great Britain, &c. at Westminster in the County aforesaid, was indebted to him the said *W. N.* in the said 16 l. for so much Money, by the said *T. B.* after the first Day of May in the Year of our Lord 1711, had and received to the Use of the said *W.* whereby an Action hath accrued to the same *W. N.* to demand and have of the said *T. B.* the said 16 l. according to the Form of the Statute made and provided in a Parliament of our said Lady the

now

now Queen, held at *Westminster* in the said County of *Middlesex*, on the 25th Day of *November* in the Year of the Lord 1710, intitled, *An Act for the better preventing of excessive and deceitful Gaming*; Yet he the said *T.* though often requested, hath not yet rendered the said 16 *l.* to the said *W.* but hath hitherto wholly refused, and still doth refuse, to render the same to him: Wherefore he the said *W.* saith, that he is injured, and hath Damage, *ad Val.* 20 *l.* &c.

Note; In this Case on the Issue Nil Debet, the Plaintiff had a Verdict, &c. and the Money was paid him.

The Statute against Usury pleaded to Debt on Bond.

AFTER praying Oyer of the Bond and Condition, say; Which being read and heard, he the said *M.* saith, That he ought not to be charged with the said Debt, by Virtue of the said Writing obligatory, because he saith, that after the 29th Day of *December* in the Year of our Lord 1713, to wit, on the said fifth Day of *June* in the Year of our Lord 1728, at the Parish of *St. Martin in the Fields*, it was corruptly agreed between the said *E.* (the Obligee) and the said *M.* (the Obligor) and one *C. D.* That the aforesaid *E.* should lend and advance to the aforesaid *M.* 110 *l.* and should give Day for the Payment thereof until the fifth Day of *December* then next following; and that the aforesaid *M.* and *C. D.* for the Loan and Accommodation of the said

The Stat. of
Usury pleaded.
Lilly 173.

Statutes. 100 *l.* and for giving the said Day for the Repayment thereof for the Time aforesaid, should give and pay to the said *E.* the Sum of 5 *l.* 5 *s.* upon the said fifth Day of *December* then next following, for the Interest and Profit thereof, *and for giving the said Day of Payment of the said 100 l.* which said 5 *l.* 5 *s.* do exceed the Rate of 5 *l.* for the Interest of 100 *l.* for one whole Year, contrary to the Form of the Statute in such Case made and provided. And afterwards, *to wit,* on the said fifth Day of *July* in the Year and at the Place in the Declaration above mentioned, he the said *E.* in Prosecution of the said corrupt Agreement, did lend and advance to the said *M.* and *C. D.* the said 100 *l.* and the said Writing obligatory in the Declaration above mentioned, was then and there by them the said *M.* and *C. D.* sealed, and as their Deed delivered to the said *E.* And they the said *M.* and *C. D.* did then and there, *to wit,* on the said fifth Day of *July* in the Year and Place in the said Declaration above mentioned, pay unto the said *E.* the aforesaid Sum of 5 *l.* 5 *s.* for the Profit and Interest of the said 100 *l.* and for giving Day for the Payment thereof upon the said fifth Day of *December* then next following, in Performance and Pursuance and according to the Form and Effect of the said corrupt Agreement, whereby the said Writing in the said Declaration above mentioned, by Force of the said Statute in that Case made and provided, is become void in Law: And this he is ready to verify: Whereupon he prays Judgment if he ought to be charged with the said Debt by Virtue of the said Writing obligatory.

*This seems
needless.*

And

Statutes.

And the aforesaid *E.* saith, That for any thing by him the said *M.* above in pleading alledged he the said *E.* ought not to be barred from having his said Action against him the said *M.* because he saith, That the said *M.* made, sealed, and as his Deed delivered unto the said *E.* the said Writing obligatory in the Declaration above mentioned, for a true and just Debt due to the said *E.* by the said *M.* Without this, that it was corruptly agreed between him the said *E.* and the said *M.* and one *C. D.* in Manner and Form as the said *M.* hath in pleading above alledged: And this he is ready to verify: Wherefore he prays Judgment, and his said Debt, together with his Damages by Occasion of the Detention of that Debt, to be adjudged to him, &c.

*Replication,
That it was
a true and just
Debt.*

*And Traverses
the corrupt
Agreement.*

And the said *M.* as before saith, That it was corruptly agreed between the said *E.* and the said *M.* and one *C. D.* in Manner and Form as he the said *M.* hath in pleading above alledged: And of this he puts himself on the Country; and the said *E.* doth so likewise. Therefore let a Jury thereupon come, &c. (*i.e.* the Award of the *Venire*, *ut supra*.)

*Rejoinder and
Issue, &c.*

After the Issue is joined, and the *Venire* awarded, as before, you are to make up the *Nisi Prius* Record, in order to the Trial of the Issue, which in Debt on Bond, &c. is made up in this Manner, viz.

Statutes.

Pleas before our Lord the King at Westminster, of Trinity Term in the fifth Year of the Reign of our Lord George the Second, now King of Great Britain, &c. Roll

In B.R.
The Nisi
Prius Record
in Debt on
Bond, &c.
Lilly 185.

Middlesex, to wit. **B**E it remembered, That heretofore, to wit, in Easter Term last past, before our Lord the King at *Westminster*, came *S. D.* Gentleman, by *J. L.* his Attorney; and brought into the Court of our said Lord the King then there his certain Bill against *R. A.* Esq; otherwise called *R. A.* of the *Inner Temple, London*, Esq; being in the Custody of the Marshal, &c. of a *Plea of Debt*; and there are Pledges of the Prosecution, to wit, *John Doe* and *Richard Roe*. Which said Bill follows in these Words, to wit, *Middlesex, to wit, S. D.* Gentleman, complains of *R. A.* Esq; otherwise called *R. A.* of the *Inner Temple, London*, Esq; being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a *Plea*, That he render to him 130*l.* of lawful Money of *Great Britain*, which he owes to him, and unjustly detains; for that, to wit, That whereas the aforesaid *R.* on the 17th Day of *April* in the Year of our Lord 1730, at *Westminster* in the County aforesaid, by his certain Writing obligatory, sealed with the Seal of the said *R.* and to the Court of our said Lord the now King *here shewn*, the Date whereof is on the same Day and Year, acknowledged himself to be held and firmly bound to the said *S.* in the aforesaid

said 130 l. to be paid to the said S. when he should be afterwards thereto required; yet he the aforesaid R. though often required, hath not yet paid the said 130 l. to the said S. but hath hitherto altogether refused and still doth refuse to pay it to him, to the Damage of him S. 20 l. And thereupon he brings this Suit, &c.

To this the Defendant pleads Non est Factum (see before) and Issue thereon; all which, with the Award of the Venire, &c. are to be entered on the Nisi Prius Record.

And the Jurata, or Award of the Habeas Corpora Juratorum thereupon, is made up thus, viz.

Pleas before our Lord the King at Westminster, of Trinity Term in the fifth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c.

Middlesex, to wit. **T**HE Jurors between *Plea and Issue.*
S. D. Gentleman, Award of the
 by his Attorney, Plaintiff, and *R. A. Esq; Venire;*
 otherwise called *R. A. of the Inner Temple, And the Jura-*
London, Esq; Defendant, of a Plea of Debt, ta thereupon.
 are respited before the Lord the King at Westminster until Tuesday next after three Weeks of Holy Trinity, except the King's right trusty and well beloved Robert Lord R. Chief Justice of our said Lord the King, assigned to hold Pleas before the King himself, shall first come on Monday next after the said three

Note.

Attorneys. three Weeks of Holy Trinity, at *Westminster* in the Great Hall of Pleas there, by the Form of the Statute, for Default of the Jurors, (&c.) Therefore let the Sheriff have the Bodies of the Jurors, &c. The same Day is given to the aforesaid Parties at the same Place, &c.

See the Form of a Postea antea.

The Form of a Bill filed in Debt on Bond against an Attorney of C. B. in Order to forejudge him, viz.

In C. B.
A Bill filed
against an At-
torney, in Or-
der to forejudge
him.
Lilly 184.
See Clift's
Entr. 241.

Middlesex, to wit. **F.** O. Widow, by R. B. her Attorney, complains of B. T. an Attorney of the Court of our Lord the King of the Bench here at *Westminster*, otherwise called B. T. of the City of L. Gentleman, being present here in Court in his proper Person, of that, That he hath not rendered to the said F. 100*l.* which he owes to her, and unjustly detains; for that, That whereas he the said B. on the 15th Day of *July* in the 5th Year of the Reign of our Sovereign Lord George the Second, now King of *Great Britain*, at *Westminster* in the said County of *Middlesex*, by his certain Writing Obligatory had acknowledged himself to be held and firmly bound to the said F. in the said 100*l.* to be paid to the said F. when he should be thereto required: Yet be the aforesaid B. though oftentimes thereto requested, had not yet paid the said 100*l.* to the said F. but hath hitherto refused, and still doth refuse to pay the same to her; whereupon the

the said F. saith, That she is injured, and hath Damage to the Value of 20*l*. And thereupon she prays Remedy, &c. And she brings here into Court the said Writing, which testifies the said Debt in Form aforesaid, the Date whereof is on the Day and Year abovesaid, &c.

Upon Filing of which Bill, there is made the following Rule, viz.

Except the Defendant shall appear on Saturday next after the Morrow of the Ascension of our Lord, let him be forejudged the Court.

The Rule thereon.

By the Court. Cooke.

Here may be added the several Pleas in Bar to Actions of Debt, besides those already shewn; but as a due Prosecution of this Head would enlarge this Treatise beyond its due Bounds, I am obliged to postpone the Consideration thereof to some other Opportunity; and shall conclude this Title Debt with the following Plea, viz.

A Plea in Bar on the Act for Discharge of poor Prisoners.

AND the aforesaid J. W. by T. F. his Attorney, comes and defends the Force and Injury, when, &c. and saith, That he cannot deny the Action of the aforesaid W. T. nor but that he owes to the said W. T. the aforesaid 50*l*. in the Form as the said W. T. hath above declared against him. But he the said J. W. further saith, That the said W.

The Act for Discharge of poor Prisoners pleaded in Bar in Debt. See Clift's Entr. 156.

Am

Declaratio. *W. T.* ought not to have Execution of the said Debt, or of any Damages occasion'd by the Detention of that Debt, to be adjudged to him either upon the Person of him *J. W.* or of his Wearing Apparel, or Household Furniture, not exceeding the Sum of 10*l.* in Value, or of the necessary Tools of his Trade and Occupation; because he the said *J. W.* saith, That on, &c. he was a Prisoner in the Prison called the *King's Bench* Prison in the County of *Surrey*, under the Custody of *A. B. Esq;* the then Marshal of the *Marshalsea* of our Lord the now King, before the King himself, being then the Keeper of the said Prison, and was then and there detained in the said Prison at the Suit of several Persons his Creditors, for divers Debts due to them by him the said *J. W.* And that he the same *J. W.* being poor, and altogether unable to pay to his said Creditors their Debts due to them by the said *J. W.* did afterwards, to wit, on, &c. at, &c. petition, &c. to be relieved in that Particular, according to the Form of (*divers Statutes*) the late Statute made and enacted for Relief and Discharge of poor Prisoners, &c. and thereof did then and there give Notice to the said *W. T.* (to whom he owed the said 50*l.* as aforesaid) in due Manner, according to the Form of the same Statutes; and thereupon, afterwards, to wit, on, &c. at, &c. he the said *J. W.* was in a due Manner, and according to the Form of the said Statutes released and discharged from the said Prison, the said *W. T.* no way contradicting it: And this he is ready to verify: Wherefore he prays Judgment, if the said *W. T.* ought to have Execution of the Debt

Debt and Damages aforesaid, either upon the Person of him *J.* or of his Apparel or Household Goods, or the necessary Tools of his Trade.

Pliffons.

And because the said *W. T.* doth not deny the said Matters so alledged by the said *J.* *W.* in the Form aforesaid, but admits the same to be true, he demands Judgment thereof, and his said Debt, together with his Damages by Occasion of the Detention of that Debt, to be adjudged to him, to be levied upon the Lands, Tenements, Goods and Chattels of him *J. W.* (his Wearing Apparel and Furniture of his House, not exceeding 10*l.* in Value, and the necessary Tools of his Trade only excepted) but not upon the Person of the said *J. W.* according to the Form of the Statutes aforesaid: Therefore it is considered, That the said *W. T.* shall recover against the said *J. W.* his said Debt, and his Damages by Occasion of the Detention of that Debt to 50*s.* by the Court here adjudged to the said *W. T.* by his own Assent, to be executed and levied upon the Lands, Tenements, Goods and Chattels of the said *J. W.* (his Wearing Apparel and Household Furniture, not exceeding 10*l.* in Value, and the necessary Tools of his Trade only excepted) but not upon the Person of the said *J. W.* according to the Form of the Statutes aforesaid, and the said *J. W.* in Mercy, &c.

Replication.

And Judgment.

See Clift's Entr. 156, 157. *The Stat. of twothirds of the Creditors compounding, &c. pleaded.* And Lilly 108. *The Stat. 10 Annæ, c. — pleaded in Discharge of a Defendant from Execution, with a Replication, That the Defendant*

Covenant. Defendant did not remain a true Prisoner, and a Traverse of his Discharge; to which the Defendant rejoins with a Protestando, and takes Issue on the Traverse.

Debt on Bond to a Sheriff from the Sureties of two Bailiffs, conditioned for Performance of Covenants in Indentures.

Plea, that the Indentures are in the Hands of the Obligees, and that the Obligors, the Bailiffs, have performed all Covenants generally.

AND the said *A.* by ——— his Attorney, comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing Obligatory; and it is read to him in these Words, to wit, &c. And he also prays Oyer of the Condition of the said Writing Obligatory; and it is read to him in these Words, to wit, &c. Which being read and heard the said *A.* saith, That the said *B.* ought not to have his said Action thereon against him the said *A.* because he says, that the aforesaid Indentures mentioned in the aforesaid Condition, at the Time of making of the aforesaid Writing Obligatory, and always afterwards, were in the Custody and Power of the said *B.* to wit, at *C.* aforesaid, and that the said Indentures, or either of them, never was in the Custody or Power of the said *A.* And the said *A.* further saith, That the said *D. E.* and *F. G.* mentioned in the said Condition, always after the making of the said Writing Obligatory, well and truly observed, performed, fulfilled, accomplished, paid and kept, all and singular the Covenants, Grants, Articles, Clauses, Provisoos, Payments, Conditions and Agreements whatsoever, which on the Part and Behal

Behalf of the said *D. E.* and *F. G.* their Executors, Administrators and Assigns, were or ought to be observed, performed, fulfilled, accomplished, paid and kept, comprised and mentioned in the said Indentures, in all Things according to the true Intent and Meaning of the said Indentures, to wit, at *C.* aforesaid: And this he is ready to verify: Wherefore he prays Judgment, whether the said *B.* ought to have his said Action thereof against him, &c.

And the said *B.* says, That by Reason of *Replication.* any thing above pleaded by the said *A.* he ought not to be barred from having his said Action against him, because he says, That the said Indenture, in the said Condition of *Indentures set forth.* the said Writing Obligatory lastly above-mentioned, was made at *C.* aforesaid, on the — Day of — aforesaid, between the said *B.* by the Name of *B. S.* of — in the County of —, Esq; Sheriff of the said County of —, of the one Part, and the said *F. G. A. P. J. K.* and *D. E.* by the Name of *F. G.* of *C.* in the County aforesaid, Yeoman, *A. P.* of, &c. *J. K.* of, &c. and *D. E.* of, &c. of the other Part: The Counterpart of which said Indentures, sealed with the Seals of the said *F. A. J.* and *D.* the said *B.* brings here into Court, bearing Date the same Day and Year, by which said Indenture the said *B.* did nominate and appoint the said *F.* and *D.* to be the Bailiffs of him the said *B. S.* for the Hundred of — in the County of — aforesaid, for and during all the Time that the said *B. S.* should continue Sheriff of the said County of —; And the said *F.* and *D. A. P.* and *J. K.* did by that Indenture

Covenant. ture, for themselves and every one of them severally, their and every of their Heirs, Executors and Administrators, Covenant, Grant and Agree, to and with the said *B.* his Heirs, &c. That the said *F.* and *D.* should at all Times then after and from Time to Time, for and during all the Time that the said *B.* should continue Sheriff of the said County of —, duly, faithfully and lawfully execute and serve all and all Manner of Briefs, Warrants, Precepts or Mandates, directed, or to be directed to the Bailiffs of the said Hundreds or to them the said *F. G.* and *D. E.* by or in the Name of the said Sheriff, or by or in the Name of any Officer or Person in that Behalf lawfully authorized, which should be tendered, or come to the Hands of the said Bailiffs to be executed or served, and should make true, direct and lawful Return and Returns, and Answer in Writing subscribed with his own Hand, of, to or upon every such Brief, Warrant, Precept or Mandate, and should deliver the same, together with the same Returns to the said Sheriff, or his Under Sheriff for the Time being, at or before the Days or Times of the Return or Returns of the same Brief, Warrants, Precept, or Mandate, without any Manner of Fraud or Delay, as by the said Indenture brought here into Court, (among other Things) fully appears: And the said *B.* further says, That whilst he the said *B.* continued Sheriff of the said County of — And whilst the said *F.* and *D.* continued his Bailiffs for the Hundred of — aforesaid, to wit, on the — Day of — in the — Year of the Reign of his present Majesty

Breach assigned.

Majesty, there issued out of the Court of his said Majesty of the Common Bench here, to wit, at *Westminster*, his said Majesty's Writ of *Testatum Fi. Fa.* directed to the then Sheriff of the County of ———— aforesaid, by which Writ his said Majesty reciting, that he had lately commanded his Sheriff of this County of *M.* that he should cause to be made of the Goods and Chattels of *N. O.* late of, &c. in this said County of ————, Yeoman, in his Bailiwick 200*l.* which in his said Majesty's Court, before his Justices at *Westminster*, had been awarded to *P. Q.* Esq; for his Damages which he had sustained by Reason of the said *N. O.* not performing certain Promises and Undertakings, made by him the said *N.* to the said *P.* at ———— in his said Majesty's County of *M.* And that he should have the Money before his said Majesty's Justices at *Westminster*, on, &c. [the Return] then last past, to render to the said *P. Q.* for his said Damages, whereof the said *N.* was convicted; and that his said Majesty's said Sheriff of his said County of *M.* had made a Return to his said Majesty's said Justices at that Day, that the said *N.* had not any Goods or Chattels in his Bailiwick, whereof he could cause to be made the said Money: Whereupon it being sufficiently testified in his said Majesty's said Court, before his said Justices at *Westminster* aforesaid, that the said *N.* had sufficient Goods and Chattels in the Bailiwick of the said Sheriff of ————, whereof the said 200*l.* might be made and levied: Therefore his said Majesty commanded the said Sheriff of ————, that of the Goods and Chattels of the said

Bond.

N. in his Bailiwick, he should cause to be made the said 200*l.* for the said Damages, and have the said Money before his said Majesty's Justices at *Westminster* aforesaid, on, &c. [the Return] to render to the said P. for his Damages aforesaid; and that the said Sheriff of —, should have there that Writ; which said Writ, afterwards; and before the Return thereof, to wit, on the — Day of —, &c. at C. aforesaid, was delivered to the said B. S. being then and from thenceforth, until and after the Return of the said Writ, Sheriff of the said County of —, to be executed in due Form of Law; by Virtue of which said Writ the said B. afterwards and before the Return thereof, to wit, on the same Day and Year last above-mentioned, at C. aforesaid, by his Warrant in Writing, sealed with the Seal of his Office of Sheriff of the said County of —, commanded the said D. E. and F. G. and T. R. that they, or one of them, of the Goods and Chattels of the said N. in the Bailiwick of the same Sheriff of —, should cause to be made the said 200*l.* for the said Damages, so that the said Sheriff might have that Money before his said Majesty's Justices at *Westminster* aforesaid, on the said, &c. [the Return] then next following, to render to the said P. for his said Damages; which said Warrant afterwards and before the Return of the said Writ, to wit, on the same Day and Year, at C. aforesaid, was delivered to the said F. being then and from thenceforth, until and after the Return thereof, one of the Bailiffs of the same Sheriff of — for the Hundred of — in the County of — aforesaid.

In Debt on

419

Bond.

— afore said, to be executed in due Form of Law; by Virtue of which said Warrant, the said *F.* afterwards, and before the Return of the said Writ, to wit, on the same Day and Year, at *C.* afore said, levied of the Goods and Chattels of the said *N.* in the said Bailiwick of the said Sheriff of —, the Sum of —, Parcel of the said Damages: Nevertheless the said *F.* did not deliver a Return and Answer in Writing, subscribed with his own Hand, of, to or upon the said Warrant to the said *B.* or his Under-Sheriff, at or before the said Day or Time of the Return of the said Warrant, according to the Form and Effect of the said Covenant, made in that Respect as afore said: And this he is ready to verify: Wherefore he prays Judgment and his said Debt, together with his Damages, by Reason of detaining the said Debt to be adjudged to him, &c.

W. Chapple.

And the said *William* comes and defends the Force and Injury, when, &c. and says, That the said *T.* ought not to have or maintain his said Action therefore against him, because he says, that the said *T.* heretofore, to wit, in the Term of *St. Michael* in the — Year of the Reign of our now Lord the King, in the Court of our said Lord the King, before *Sir Robert Eyre, Knt.* and his Companions, then Justices of our said Lord the now King, of the Bench at *Westminster*, impleaded the said *W.* in a certain Plea of Debt upon Demand of 200*l.* upon the said Writing Obligatory now brought hereinto Court,

Plea, that the Plaintiff obtained a Judgment on the same Bond.

E c a

and

Bond. and such were the Proceedings thereupon in the said Court of the Bench, that the said *Thomas* afterwards, *to wit*, in the said Term of *St. Michael* in the ——— Year aforesaid by the Consideration of the same Court, recovered against him the said *William* as well his said Debt of 200*l.* as 50*s.* which were adjudged to the said *Thomas* in the same Court of the Bench aforesaid for his Damages which he had sustained by Occasion of detaining the said Debt, whereof the said *William* is convicted, as by the said Record and Proceedings thereupon remaining in the said Court of the Bench aforesaid may more fully appear; which said Judgment still remains in full Force and Virtue, in no wise reversed, annulled, paid, satisfied or discharged: And this he is ready to verify: Wherefore he prays Judgment, if the said *B.* ought to have or maintain his said Action therefore against him, &c.

J. Darnal.

Debt on a Bond inter alia for performing Covenants in an Indenture of Apprenticeship.

Plea, Performance of the Condition, &c.

AND the said *William* by ——— his Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing obligatory; and it is read to him, &c. He also prays Oyer of the Condition of the said Writing obligatory; and it is read to him in these Words, *to wit*, Whereas *J. S.* Son of the above bounden *W. S.* is bound an Apprentice, according to the Custom of the City of

of London, to the said *R. F.* but it is agreed, that the said *W.* shall find and provide for the said *J. S.* sufficient Wearing Apparel of all kinds for and during his Apprenticeship, notwithstanding any Covenant there may be in the Indentures of Apprenticeship to the contrary: Now the Condition of this Obligation is such, that if the above bounden *W. S.* his Executors and Administrators, do and shall in all things well and truly find and provide for his said Son *J. S.* sufficient Wearing Apparel of all kinds both Linen and Woollen for and during the Continuance of the said Apprenticeship; and also if the said *J. S.* do and shall in all things well and truly observe, perform, fulfil and keep all and every the Covenants, Grants, Articles and Agreements, which on the Part and Behalf of the said *J. S.* are or shall be to be observed, performed, fulfilled and kept, for and during the Term of seven Years from the Date of the said Indentures of Apprenticeship, then this Obligation to be void, or else to be and remain in full Force and Virtue: Which being read and heard, the said *W. S.* saith, that the said *R. F.* ought not to have or maintain his said Action against him for the same, because he says, that he the said *W. S.* hath in all things well and truly found and provided for his said Son *J. S.* sufficient Wearing Apparel of all kinds both Linen and Woollen: And the said *W. S.* further saith, that the said *J. S.* hath in all things well and truly observed, performed, fulfilled and kept all and every the Covenants, Grants, Articles and Agreements, which on the Part and Behalf of the said *J. S.* have been to be observed, performed, fulfilled and kept, from

Bond.

the Date of the said Indentures of Apprenticeship to this Time: And this he is ready to verify: Wherefore he prays Judgment, if the said Plaintiff ought to have or maintain his said Action against him.

W. Hawkins.

Replication.

And the said *R. F.* saith, that he by any thing before alledged ought not to be barred from having his aforesaid Action maintained against the said *W. S.* because he says, that the said Indenture of Apprenticeship mentioned in the said Condition was made on the 10th Day of *March* in the Year of our Lord 1736, at *Westminster* aforesaid, between the said *J. S.* mentioned in the said Condition of the one Part, and the said *R. F.* of the other Part; the one Part of which said Indenture sealed with the Seal of the said *J. S.* he the said *R. F.* brings here into Court, bearing Date the same Day and Year aforesaid; by which said Indenture the said *J. S.* put himself Apprentice to the said *R. F.* a Foreign Brother of the Mystery or Commonalty of Barbers and Surgeons of *London*, to learn his Art, and with him after the Manner of an Apprentice to serve from the Day of the Date unto the full End and Term of seven Years from thence next following to be fully complete and ended; And the said *J. S.* by the said Indenture covenanted, that he the said *J. S.* during the said Term his said Master faithfully would serve, his Secrets keep, his lawful Commands every where gladly do, that he would do no Damage to his said Master, nor see any to be done of others; but that he to his Power would let or forthwith give Warning to his said

said Master of the same, as by the said Indenture amongst other Things may more fully and at large appear: And the said R. F. further saith, that he the said J. S. after the making of the said Indenture, *to wit*, on the same Day and Year abovesaid, at W. abovesaid, entered into the Service of the said R. F. to serve the said R. F. as his Apprentice, according to the Tenor and Effect of the said Indenture, and in the said Service of the said R. F. from that Time hitherto hath remained and continued: And the said R. F. further saith, that during the said Time, *to wit*, on the ——— Day of ——— in the Year of our Lord ——— at W. abovesaid, he the said J. S. having Discourse with one ——— then a Customer and Patient to the said R. F. in his Art of a Surgeon, which Art the said R. F. from the Time of making of the said Indenture hitherto hath followed, used and exercised, he the said J. S. then and there by Words spoken by the said J. S. to the said ——— of the said R. F. in his abovesaid Business, represented the said R. F. as an ignorant Man in his said Business, and declared the said R. F. to be not knowing enough in his said Business, whereby and on which Account the said ——— from that Time hitherto hath deserted the said R. F. and left employing the said R. F. in his abovesaid Business, and still desists therefrom, *to wit*, at W. abovesaid: And this he is ready to verify: Wherefore he prays Judgment and his Debt abovesaid, together with his Damages on Occasion of the detaining that Debt to be adjudged to him, &c.

Declarations, &c.

*Debt on Bond conditioned for Payment of
40 l. by Quarterly Payments.*

*Plea, that the
Plaintiff is in-
debted to De-
fendant in 21 l.
for the Board
of a third Per-
son, and that
only 15 l. is
due on the
Bond.*

AN D the said *Thomas* by ——— his At-
torney comes and defends the Force and
Injury, when, &c. and prays Oyer of the
said Writing obligatory; and it is read to him,
&c. he also prays Oyer of the Condition of
the said Writing obligatory; and it is read to
him in these Words, *to wit*, The Condition,
&c. Which being read and heard, the said
Thomas says, that the said *Charles* ought not
to have or maintain his said Action thereupon
against him, because he says, that on the Date
of the said Writing obligatory the said *Charles*
at *London* aforesaid, in the Parish and Ward
aforesaid, was and still is justly indebted to
the said *Thomas* in the Sum of 21 l. 5 s. for
Meat, Drink, Washing and Lodging, for
E. D. by the said *Thomas*, at the Request of
the said *Charles*, before that Time found and
provided; which said Sum of 21 l. 5 s. the
said *Charles* in Consideration of the Premisses
then and there promised to pay unto the said
Thomas: And the said *Thomas* further saith,
that at the Day of the exhibiting the Bill of
the said *Charles* against him the said *Thomas*
the Sum of 15 l. only Parcel of the said 40 l.
in the Condition of the said Writing ob-
ligatory mentioned, were and now are due
from the said *Thomas* unto the said *Charles* by
the said Condition, and not more; and that
by Force of the Statute in such Case made
and provided the said *Charles* is become liable
and chargeable to allow unto the said *Thomas*
the

In Debt on

425

Bond.

the said Sum of 21 l. 5 s. in Discharge and Satisfaction of the said Sum of 15 l. so as aforesaid, at the Day of the exhibiting the said Bill due unto the said *Charles* from the said *Thomas* by the Condition of the said Writing obligatory: And this he is ready to verify: Wherefore he prays Judgment, if the said *Charles* ought to have or maintain his said Action thereupon against him, &c.

Debt on a Bond conditioned inter alia, that if T.S. should die during the joint Lives of Plaintiff and Defendant, Defendant should not marry any other Woman, but should marry Plaintiff within twelve Months after the Death of T.S. if she should be willing.

AND the said *J.* by *L. R.* his Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing in the said Declaration mentioned; and it is read to him in the Words and Figures following, *to wit, Noverint Universi, &c.* He also prays Oyer of the Condition of the said Writing; and it is also read to him in these Words, *to wit, The Condition of this Obligation is such, that if the above bound J. M. shall happen to die in the Life-time of T. G. Citizen and Linen-draper of London, that then and in such Case, if the Executors or Administrators of the said J. M. do and shall within three Months after his Decease well and truly pay or cause to be paid unto the said E, (if she shall be then living) the*
Plea.
Oyer.
Condition.
Sum

Tenth.

Sum of 50*l.* of good and lawful Money of Great Britain; but if she shall happen to die in the Life-time of the said *T. S.* and before the said *J. M.* then if the Executors or Administrators of the said *J. M.* shall within the Time aforesaid pay or cause to be paid to such Child or Children of the said *E.* who shall be living at that Time the Sum of 50*l.* or if the said *T. S.* shall happen to die during the joint Lives of the said *J. M.* and *E.* that then and in such Case, if the said *J. M.* shall not intermarry with any other Woman, or converse or keep Company with any such Woman in an unlawful, incontinent Way during the natural Life of her the said *E.* but shall intermarry with the said *E.* within twelve Months after the Decease of the said *T. S.* if the said *J. M.* shall require her so to do (on Condition that she the said *E.* shall be willing to accept and take him the said *J. M.* for her Husband) and shall not during the Life of the said *T. S.* declare, publish, or shew this present Obligation without the Consent of the said *E.* to any Person whatsoever, then this Obligation to be void, or else to be and remain in full Force and Virtue: Which being read and heard, the said *J. M.* saith, that the said *E.* ought not to have her said Action against him, because he saith, that at the Time of making the Writing above mentioned, the said *E.* was the Wife of the said *T. S.* lawfully married to him, *to wit,* at *Westminster* aforesaid: Which said *T. S.* since the making the said Writing, *to wit,* upon the — Day of —, &c. at *Westminster* aforesaid, died, and that he the said *J. M.* hath not married with any other Woman, or conversed

Plea that he hath not intermarried any other Woman, nor been requested to marry Plaintiff.

versed or kept Company with any such Woman in an unlawful, incontinent Way, against the Tenor or Effect of the said Condition: And he the said *J. M.* further saith, that he at any time within twelve Months next after the Decease of the said *T. S.* hath not been requested by the said *E.* to intermarry with her, nor hath he the said *J. M.* required her so to do, nor hath she the said *E.* given any Notice to him the said *J. M.* of her being willing to accept and take him the said *J. M.* to be her Husband: And he the said *J. M.* further saith, that during the Life of the said *T. S.* he the said *J. M.* hath not declared, published or shewn the said Writing to any Person whatsoever: And this he is ready to verify: Wherefore he prays Judgment, if the said *E.* ought to have her said Action against him, &c.

W. Chapple.

And the said *E.* says, that by any thing above alledged she ought not to be precluded from having her said Action against the said *J. M.* because she the said *E.* protesting that she the said *E.* was not at the Time of making the said Obligation the Wife of the said *T. S.* lawfully married to him, for Plea she the said *E.* by way of Replication said, that after the making of the said Writing obligatory, *to wit*, on the ——— Day, &c. at *Westminster* afore said, he the said *T. S.* died, and that the said *J. M.* within twelve Months after the Decease of the said *T. S.* *to wit*, on the ——— Day, &c. at *Westminster* afore said, intermarried with one *A. S.* contrary to the Form and Effect of the said Condition: And this the

Replication,
that within
the twelve
Months De-
fendant mar-
ried another
Woman.

Debt. *W. Hawkins.*
 said *E.* is ready to verify: Wherefore she demands Judgment, and that her said Debt, together with her Damages occasioned by detaining the said Debt, may be adjudged to her, &c.

W. Hawkins.

Rejoinder did not intermarry with, &c.

And the said *J. M.* as to the Replication of the said *E.* says, that he the said *J. M.* hath not intermarried with the said *A. S.* after the Death of the said *T. S.* in Manner and Form as the said *E.* hath by her Replication above alledged: And of this he puts himself upon the Country, &c.

W. Chapple.

Demurrer.

Cause of Demurrer.

And the said *E.* saith, that the said Plea of the said *J. M.* in Manner and Form by way of Rejoinder pleaded, and the Matter therein contained, is not sufficient in Law to bar the said *E.* from having her said Action against him the said *J. M.* and that the said *E.* is not bound by the Law of the Land to make any Answer thereto: And this she is ready to verify: Wherefore for want of a sufficient Rejoinder in this Part the said *E.* as before prays Judgment, and her said Debt, together with her Damages by reason of the detaining thereof to be adjudged to her: And for Cause of Demurrer sheweth, that the said Issue contains a negative Pregnant, and makes the Time of the Marriage of the said *J. M.* and *A. S.* Part thereof: Whereas it is not material whether the said *J. M.* married the said *A. S.* in the Life-time of the said *T. S.* or after his Decease.

W. Hawkins.

Debt

Debt on a Bond by Baron and Feme
Executrix.

AND the said R. by L. R. his Attorney comes and defends the Force and Injury, when, &c. and craves Oyer of the Writing obligatory aforefaid; and it is read to him, &c. He likewise craves Oyer of the Condition of the said Writing obligatory; and it is read to him in these Words, *to wit*, The Condition of this Obligation is such, that if the above bounden R. D. his Heirs, Executors or Administrators, do well and truly pay, or cause to be paid unto the Executors, Administrators or Assigns of the above named H. D. the full Sum of 80 l. of good and lawful Money of Great Britain upon the Day of the Death of the said H. D.

Oyer.

Condition to
pay 80 l. on
Testator's
Death to his
Executors, &c.

that then this present Obligation to be void, otherwise to remain in Effect; which being read and heard, the said R. says, that the said J. and M. ought not to have or maintain their said Action against him, because he says, that the said H. in his Life-time, and after the making the said Bond, *to wit*, on the ——— Day of

Plea, that
Testator was
at his Death
indebted to De-
fendant in 84 l.
for Goods sold,
&c.

——, &c. and also at the Time of his Death was indebted to the said R. in the just and full Sum of 45 l. 10 s. for seven Bullocks before that Time sold and delivered by the said R. to the said H. at his special Instance and Request; and also in the full and just Sum of 12 l. for three Horses before that Time sold and delivered by the said R. to the said H. at his like special Instance and Request; and also in the like full and just Sum of

of

Declarations, &c.

of 23 *l.* 12 *s.* 6 *d.* for the depasturing and feeding of twenty-one Bullocks of the said *H.* before that Time found and provided by the said *R.* for the said *H.* at his like special Instance and Request; and also in the Sum of 3 *l.* 10 *s.* for the like Sum of Money before that Time laid out and expended for the said *H.* by the said *R.* at the like special Instance and Request of the said *H.* which Sums make together in the whole the Sum of 84 *l.* 12 *s.* 6 *d.* and which the said *H.* in his Life-time promised the said *R.* to pay him, but did not, so that the said several Sums of Money were at the Time of the Death of the said *H.* justly due from the said *H.* to the said *R.* And the said *R.* further says, that the said *H.* died on the——Day of——, &c. at——aforesaid, and that the said Sum of 80 *l.* mentioned in the said Condition, and the Sum of 40 *s.* for Interest thereof from the Death of the said *H.* are the Sums justly due from the said *R.* to the said *J.* and *M.* as Executrix of the said *H.* upon the said Bond; and the said *R.* according to the Form of the Statute in such Case made and provided, doth here set, in this his Plea, the said several Sums above mentioned to be due from the said *H.* to the said *R.* making in the whole the Sum of 84 *l.* 12 *s.* 6 *d.* against the said 82 *l.* due on the said Bond, and in Bar of the said Demand of the said *J.* and *M.* thereon. And therefore prays Judgment whether the said *J.* and *M.* ought to have their said Action against him, &c.

W. Hawkins.

An

And the said *J.* and *M.* say, that they by any thing by the said *R.* in pleading above alledged ought not to be barred from having their said Action against him, because they say, that the several Sums of Money in the said Plea of the said *R.* mentioned, and by the said *R.* in his said Plea above supposed to be due and owing from the said *H.* at the Time of his Death to the said *R.* or any of them, were not due and owing from the said *H.* to the said *R.* in Manner and Form as the said *R.* by his said Plea hath above alledged: And this they pray may be inquired of by the Country.

W. Chapple.

Debt on a Bond.

AND the said *D.* by *E. F.* his Attorney Plea, that the comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing obligatory; and it is read to him; and he also prays Oyer of the Condition of the said Writing obligatory; and it is read to him in these Words: The Condition, &c. Which being read and heard, the said *D.* saith, that he by Virtue of the said Writing obligatory ought not to be charged with the said Debt, because he saith, that after the 29th Day of September in the Year of our Lord 1674, and before the making of the said Writing obligatory, to wit, on the——Day of——in the Year of our Lord——aforesaid, at *W.* aforesaid, he the said *D.* played with the said *P.* at a certain Play with Dice called Hazard

Bond.

Hazard for divers Sums of Money exceeding the Sum of 100*l.* upon Tick and Credit, and not for ready Money; and that he the said *D.* so playing with the said *P.* at the said Play then and there at one and the same Time and Meeting, lost upon Credit to and with the said *P.* in the whole a great Sum of Money exceeding the Sum of 100*l.* *to wit,* the Sum of 400*l.* whereof no Part was then paid by the said *D.* and the said *D.* afterwards thereupon, *to wit,* on the said — Day of — in the Year of our Lord — afore said, at *W.* afore said, made and delivered the afore said Writing obligatory, with the afore said Condition thereto subscribed, for the securing the Payment of the said 400*l.* by him the said *D.* so lost, and by the said *P.* so as afore said at the said Play won of the said *D.* at one and the same Time and Meeting upon Credit; whereby by Force of the Statute in such Case made and provided the said Writing obligatory wholly became and is void and of no Effect in Law: And this he is ready to verify: Wherefore he prays Judgment, whether he ought to be charged with the said Debt by Virtue of the said Writing obligatory, &c.

Replication.

And the said *P.* saith, that he by any thing before alledged ought not to be barred from having his said Action against the said *D.* because protesting that the said *D.* did not play with the said *P.* at the said Play with Dice called Hazard in Manner and Form as the said *D.* hath above in pleading alledged, for Replication in this particular the said *P.* saith, that the said Bond was made, sealed, and delivered to the said *P.* as the Deed of the said *D.*

D. for securing the Payment of Money really and justly due and owing from the said D. to the said P. at the Time of the making, sealing and delivering of the said Bond without this, that the said D. made or delivered the said Writing obligatory, with the aforesaid Condition thereto, for securing the Payment of Money by him the said D. lost, or by the said P. won at Play in Manner and Form as the said D. hath above in pleading alledged : And this he is ready to verify : Wherefore he prays Judgment and his Debt aforesaid, together with his Damages occasioned by detaining that Debt to be adjudged to him, &c.

And the said Henry by G. S. his Attorney, cometh and defendeth the Force and Injury, when, &c. and prayeth Oyer of the said Writing obligatory ; and it is read to him ; and he prays Oyer of the Condition of the said Writing obligatory ; and it is read to him in these Words, *to wit*, The Condition, &c. Which being read and heard, he the said H. saith, that he by Virtue of the said Writing obligatory ought not to be charged with the said Debt, because he saith, that after the 29th Day of September in the Year of our Lord 1674, and before the making the said Writing obligatory, *to wit*, on the said first Day of July in the said Year of our Lord 1733, at Westminster aforesaid, he the said Henry played with the said Samuel at a certain Play with Dice called Hazard for divers Sums of Money exceeding the Sum of 100 l. upon Tick and Credit, and not for ready Money ; and that he the said Henry so playing with the said Samuel at the said Play then and there at one and the same Time and Meeting lost upon

*Plea to Debt
on a Bond that
the Money was
won at Play.*

Prisoners.

Credit to and with the said *Samuel* in the whole a great Sum of Money exceeding the Sum of 100 *l.* to wit, the Sum of 500 *l.* whereof no Part was then paid by the said *Henry*; and the said *Henry* afterwards thereupon, to wit, on the said first Day of *July* in the Year of our Lord 1733 aforesaid, at *Westminster* aforesaid, made and delivered the aforesaid Writing obligatory, with the aforesaid Condition thereto subscribed for the securing the Payment of the said Sum of 500 *l.* by him the said *Henry* so lost, and by the said *Samuel* so as aforesaid, at the said Play won of the said *Henry* at one and the same Time and Meeting upon Credit, whereby by Force of the Statute in such Case made and provided the said Writing obligatory wholly become and is void and of no Effect in Law: And this he is ready to verify: Wherefore he prays Judgment whether he ought to be charged with the said Debt by Virtue of the said Writing obligatory.

Replication.

And the said *Samuel* saith, that by reason of any thing above by the said *Henry* in pleading alledged he ought not to be barred from having his said Action against him, because he saith, that the said Bond was not given for securing the Payment of Money won at the said Play by the said *Samuel* of the said *Henry*: And this he prays may be inquired of by the Country; and the said *Henry* likewise. Therefore, &c.

Issue.

No Award
pleaded to an
Arbitration
Bond.

And the said *Jane* by *Robert Skyrme* her Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing obligatory; and it is read to her in these Words, to wit, Know all Men, &c. (the Obligation

Obligation at large) she also prays Oyer of the Condition of the said Writing obligatory; and it is read to her in these Words, *to wit*, The Condition, &c. (the Condition at large) which being read and heard, the said *Jane* says, that the said *John Atwood* ought not to have his said Action against her, because she says, that the Arbitrators in the said Condition of the said Writing obligatory named did not make any Award under their Hands and Seals ready to be delivered to the said Parties on or before the said 29th Day of October next ensuing the Date of the said Writing obligatory; neither did the said Arbitrators choose any Umpire for the ending and composing the Difference aforesaid within the Time in the Condition of the said Writing obligatory limited in that Respect: And this she is ready to verify: Wherefore she prays Judgment, if the said *John* ought to have his said Action against her, &c.

M. Wright.

Note; *The several Titles of Detinue and Dower are here omitted, the former as being now almost ex usu, its End being better effected by an Action on the Case; and the latter, because 'tis an Action merely Real; which kind of Actions, &c. are not intended to be treated of in this Collection, which is confined to personal and mixed Actions.*

DECLARATIONS and PLEADINGS in Eject- ment.

The Form of a Declaration in Ejectment.

In B. R.
A Declaration
in Ejectment.
See Inst. Leg.
138.

Middlesex, to wit. **A.** B. late of *ſ.* in the ſaid County, Gent. complains of *C. D.* being in the Cuſtody of the Maſhal of the *Marſhalſea* of our Lord the King, before the King himſelf; for that, *to wit,* That whereas *E. F.* Eſq; on, &c. at, &c. had demifed, granted, and to Farm letten to the foreſaid *A.* three Meſuages, &c. with the Appurtenances, ſituate and being in the ſaid Pariſh of *ſ.* in the County aforeſaid; To have and to hold the Tenements aforeſaid, with the Appurtenances, to the foreſaid *A.* and his Aſſigns from (*ſuch a Day*) then laſt paſt, to the full End and Term of five Years from thence next enſuing, and fully to be complete and ended; by Virtue of which ſaid Demife he the ſame *A.* entered into the Tenements aforeſaid, with the Appurtenances, and was thereof poſſeſſed until the ſaid *C.* afterwards, *to wit,* on the ſame — Day of — in the fifth Year aboveſaid, with Force and Arms entered into the Tenements aforeſaid,

said, with the Appurtenances, in and upon the Possession thereof of him the said *A.* and ejected and amoved him the said *A.* from his Farm aforesaid, his said Term therein being not yet ended; and hath held, and yet doth hold him out of the Possession thereof, and then and there did other Wrongs to him, against the Peace of our said Lord the now King: Wherefore he the said *A.* saith, That he is injured, and hath Damage to the Value of 10 l. And thereupon he brings this Suit, &c.

See the Form of the Rule by Assent usually made hereupon, hereafter.

A Declaration in Ejectment for a Mesuage, Cotage, Land, &c. with the Moiety of a Manor, and of a Fair, Market, &c.

Leicestershire, to wit. **W** F. late of G. In B.C. in the County aforesaid, Yeoman, was attached to answer to G. S. of a Plea, why with Force and Arms he entred into five Mesuages, twenty of a Manor, Cotages, forty Acres of Land, 200 Acres of Meadow, and 400 Acres of Pasture, with the Appurtenances in *W. S.* and *H.* and a Moiety of the Manor of *H.* with the Appurtenances; and also a Moiety of the Fairs and Markets of *H.* aforesaid, and a Moiety of all the Tolls of Stallage, Piccage, Pontage, and of other Perquisites and customary Profits and Privileges to the same Manor, Fairs and Markets belonging and appertaining, which *J. D.* leased

James, &c.

leased to the said G. for a Term of Years not yet expired, and ejected him the said G. from his said Farm, and did to him other Wrongs to the great Damage of the said G. S. and against the Peace of our Lord the now King, and whereupon the same G. by *W. P.* his Attorney, complains, That whereas the said *J.* on the 10th Day of *October* in the fifth Year of the Reign of our said Lord the now King, at *W.* in the County aforesaid, had leased to the said G. the Tenements, Premisses and Moiety aforesaid, with the Appurtenances, To have and to hold to the said G. and his Assigns from the 29th Day of *September* then last past to the End and Term of seven Years from thence next following, and fully to be complete and ended; by Virtue of which said Demise he the said G. entred into the Tenements, Premisses and Moieties aforesaid, with the Appurtenances, and was thereof possessed; and he the said G. being so thereof possessed, he the said *W. F.* afterwards, *to wit*, on the 10th Day of *October* in the said fifth Year of the Reign of our said Lord the now King entred with Force and Arms into the Tenements, Premisses and Moieties aforesaid, with the Appurtenances, which the said *J.* had demised to the said G. in the Form aforesaid; for the said Term not yet expired; and ejected him from his said Farm, and did to him other Wrongs, to the great Damage of him the said G. and against the Peace, &c. Wherefore he saith, that he is injured, and hath Damage to the Value of 40 *l.* And thereupon, &c.

A De-

*A Declaration for Mesne Profits in an
Ejectment, &c.*

Worcestershire, to wit. **J.** D. late of *W.* in *In B. R.*
the County of Ejectment for
 Gloucester, Yeoman, was attached to answer *the Mesne Pro-*
 to *J. U.* of a Plea, why with Force and Arms, *fits, &c.*
 three Mesuages, 500 Acres of Land, 200 *Lilly 192,*
 Acres of Meadow, and 200 Acres of Pasture, *193.*
 with the Appurtenances in *T.* in the said Coun-
 ty of *W.* he broke and entred, and expelled,
 and removed him *J. U.* from the Possession
 and Occupation of the same Tenements; and
 for a long Time, *to wit,* from, *&c.* to, *&c.*
 held and kept the said *J. U.* from the Posses-
 sion and Occupation of the same Tenements,
 from whence he had been so expelled and a-
 moved; and also for and during the said whole
 Time took and had all the Issues and Profits
 of the same Tenements, being of the yearly
 Value of 200 *l.* to the proper Use of him
J. D. and also did to him other Wrongs, to
 the great Damage of him *J. U.* and against
 the Peace of our Lord the now King; and
 whereupon he the same *J. U.* by *J. S.* his At-
 torney, complains, That the said *J. D.* on
 the first Day of *July* in the fifth Year of the
 Reign of our Lord the now King, broke and
 entred with Force and Arms into the said
 three Mesuages, 500 Acres of Land, *&c.*
 with the Appurtenances in *T.* in the said
 County of *W.* and expelled and amoved him
 the said *J. U.* from the Possession and Occu-
 pation of those Tenements; and for a long
 Time, *to wit,* from, *&c.* to, *&c.* as aforesaid
 F f 4 held

Plea in Abatement.

held and kept the said *J. U.* from the Possession and Occupation of the same Tenements, from whence he had been so expelled and amoved, and also took and had the Issues and Profits of the same Tenements, being of the yearly Value of, &c. for and during that whole Time, to the proper Use of him *J. D.* and did to him the said *J. U.* other Wrongs; to the great Damage of him the said *J. U.* and against the Peace, &c. Whereupon he saith, That he is injured, and hath Damage to the Value of 40*l.* And thereupon he brings his Suit.

*Plea in Abatement:
No such Writ
in the Register.
Oyer and Recital of the
Writ.*

And the said *J. D.* by *J. L.* his Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writ; and it is read to him in these Words, to wit, *George* the Second, by the Grace of God, &c. To the Sheriff of the County of *Worcester*, Greeting, If *J. U.* shall make you secure for prosecuting of his Suit; then put by Gages and safe Pledges, *J. D.* late of *W.* in the County of *G.* Yeoman, That he be before us from the Day of *Easter* in one Month, wheresoever we shall then be in *England*, to shew why with Force and Arms he broke and enter'd into three Meluages, &c. in *T.* in thy County, and for a long Time kept and held the said *J. D.* out of the Possession and Occupation of the same Tenements; and also took and had all the Issues and Profits of the same Tenements, being of the yearly Value of 200*l.* to the proper Use of the said *J. D.* and did to him other Wrongs to the great Damage of him *J. U.* and against our Peace; and have there the Names of the Pledges and this Writ: Witness ourself

at

at Westminster the 12th Day of April in the 5th Year of our Reign: Which being read and heard, he the said J. D. prays Judgment of the said Writ, because he saith, That there is not any such Form of a Writ of Trespass in the Register of Writs, as the Form of the afore said Writ, and that the said Writ varies from the said Register of Writs in this; That it does not appear by that Writ, that the Mesuages and Lands therein mentioned, were the Mesuages and Lands of the said J. U. And this he is ready to verify: Wherefore he prays Judgment of the said Writ, and that the said Writ may be quashed, &c. *Note; This Plea seems only for Delay.* But the said Plea in Abatement being overruled, the Defendant afterwards pleaded the common Plea of Not guilty to the Force, and to the Residue that the Plaintiff had not named the Closes, &c. *Variance.*

And the afore said J. D. by J. L. his Attorney comes and defends the Force and Injury, when, &c. and as to the coming with Force and Arms, and whatsoever is against the Peace, &c. he the said J. D. saith, That he is Not guilty thereof: And of this he puts himself upon the Country; and the said J. U. doth so likewise. And as to the Residue of the said Trespass above supposed to be done, he the said J. D. saith, That the said J. U. ought not to have or maintain his said Action thereof against him, because he saith, That the Mesuages afore said, and also the Places afore said, wherein the Trespass afore said is above supposed to be done, are, and at the Time wherein the said Trespass is supposed to be done were, one Mesuage, called *Plea in Bar, Not guilty, &c. Lilly 193.*
White-

Lands, &c. *White-House*, one other Mesuage called *Black-House*, and another Mesuage called *Red-House*, and 500 Acres of Lands, called *Blacklands*, &c. with the Appurtenances in *T.* aforesaid in the County aforesaid, which said Tenements with their Appurtenances are, and at the Time of the said supposed Trespas were, and also for and during the whole Time in the said Declaration above-mentioned, have been the proper Soil and Freehold of him the said *J. D.* whereby he the said *J. D.* at the aforesaid Time, wherein the said Trespas is supposed, and also for and during the whole Time in the aforesaid Declaration mentioned, he the said *J. D.* hath broken, enter'd into, had, held, used and occupied the said several Mesuages, Closes, Lands, &c. in the said Declaration mentioned, and taken, had and received, the Rents, Issues and Profits of the same to his own proper Use and Benefit, as he well and lawfully might: And this he the said *J. D.* is ready to verify: Wherefore he prays Judgment, if the said *J. U.* ought to have or maintain his said Action thereof against him, &c.

E. Norby.

As

An Entry of a Judgment by Nil dicit in Ejectment, (i.e. where the Defendant lets Judgment go by Default) and Judgment thereon for the Plaintiff to recover the Term and Damages.

AND the aforesaid J. by B. H. his Attorney comes and defends the Force and Injury, when, &c. and saith nothing in Bar or Preclusion of the said Action of the said L. but makes Default, whereby he the said L. remains against the said J. thereof altogether undefended; therefore it is considered, That the said L. shall recover against the said J. his said Term yet to come of and in the Mesuages, Lands, &c. aforesaid, with their Appurtenances; and it is also considered, That the said L. ought to recover his Damages by Occasion of the Premises against him the said J. and thereupon he the said L. doth freely here in Court remit to the said J. all and all Manner of Damages, Charges and Costs, which he the said L. hath sustained by Occasion of the Premises, or which in this Particular may be adjudged to him, and all and all Manner of Judgments and Executions to be had of or for the same. *Therefore let the said J. be acquitted of the said Damages, Charges and Costs:* Whereupon it is command to the Sheriff, That he cause the said L. to have his Possession of his said Term yet to come of and in the said Mesuages, Lands, &c. aforesaid, with their Appurtenances, without Delay, and how that Precept he shall have executed, let him make known

Nil dicit in Ejectment, and Judgment thereon.
Lilly 194.

Remittit Damna, &c.

Lands, &c. known to our Lord the now King, from the Day of *Easter* in 15 Days, wheresoever he shall then be in *England*; the same Day is given to the said *L. &c.*

Or the same (if it be without a Remittit Damna) may be entered thus:

*Another Form
without a Re-
mittit
Damna.*

AND the aforesaid *J.* by *B. H.* his Attorney comes and defends, &c. (as above) yet to come of and in the Mesuages and Lands and Tenements aforesaid, with their Appurtenances; and also that he ought to recover his Damages by Occasion of the Premises against the said *J.* Whereupon it is commanded to the Sheriff, that he cause the said *L.* to have his Possession, (&c. as above.)

A Declaration in Ejectment on a double Demise.

*Ejectment on
a double De-
mise.*

*Lilly 204.
2 Salk. 774.*

*Demise by
Executors,*

Kent, to wit. **L** L. late of *London*, Gent. was attached to answer to *T. H.* Gent. of a Plea, wherefore with Force and Arms he entered into 10 Mesuages, 10 Gardens, 6 Orchards, 150 Acres of Land, 40 Acres of Meadow, and 80 Acres of Pasture, with the Appurtenances in *East-Church*, *Queenborough*, and *W.* in the Isle of *Shippy* in the County aforesaid, which *C. Lord Viscount H.* and *Sir S. G. Bart.* had demised to the said *T. H.* for a Term which is not yet ended, and ejected him from his said Farm; and also entered into 10 other Mesuages, ten other Gardens, 6 other Orchards, &c. with the

In Ejectment of

445

Lands, &c.

the Appurtenances in *East-Church, Queenborough*, and *W.* in the Island of *Shippy* in the County afore said, which *J. E.* had demised to the said *F.* for a Term which is not yet ended, and ejected him out of his said Farm, and did other Wrongs to him, to the great Damage of him the said *T.* and against the Peace of our Lord the now King, &c. and whereupon the same *T.* by *J. A.* his Attorney, complains, That whereas they the said *C. Viscount H.* and *Sir S. G. Baronet*, on the 4th Day of *July* in the ——— Year, &c. at *East-Church* afore said, had demised to the said *T.* the Tenements afore said, with their Appurtenances first mentioned, To have and occupy the same Tenements, with their Appurtenances unto the said *T.* and his Assigns from the third Day of *July* then last past to the End and Term of seven Years from thence next ensuing, and fully to be complete and ended : And also whereas the said *J. E.* afterwards, to wit, on the said 4th Day of *July* in the said ——— Year, &c. at *East-Church* afore said, had demised to the said *T.* the Tenements afore said, with their Appurtenances last mentioned, To have and occupy the same Tenements and Premises with their Appurtenances last mentioned, to the said *T.* and his Assigns, from the said 4th Day of *July* then last past, to the full End and Term of seven Years from thence next following, and fully to be complete and ended ; by Virtue of which said several Demises the afore said *T.* entered into the said several Tenements, with their Appurtenances, and was thereof possessed ; and he the said *T.* being thereof so possessed, the afore said

2d Demise by
Cestui que
Trust.

L.

Lands, &c.

L. afterwards, to wit, on the 7th Day of the same Month of *July* in the 5th Year aforesaid, entered with Force and Arms into the several Tenements aforesaid, with the Appurtenances, which the said *C. Lord Viscount H. Sir S. G.* and the said *J. E.* had demised to the said *T.* in the Form aforesaid, for a Term not yet past, and ejected him the said *T. H.* from his said Farm, and did other Wrongs to him, to the great Damage of him *T.* (*Ec. as before.*)

A Declaration in Ejectment on double Demise.

Wills, to wit. **A** *B.* late of *Pewsey* in the County of *Wills*, Yeoman, was attached to answer to *C. D.* of *Plea*, wherefore with Force and Arms he entered into six Acres of Meadow, and six Acres of Pasture, with the Appurtenances in *Pewsey* aforesaid, which *R. P.* had demised to the said *C.* for a Term of Years which not yet expired, and ejected him from his said Farm: And also wherefore with Force and Arms he the said *A. B.* entered into other six Acres of Meadow, and other six Acres of Pasture, with the Appurtenances in *Pewsey* aforesaid, which *W. P.* had demised to the said *C.* for a Term of Years which not yet expired, and ejected him the said *A. B.* from his said last mentioned Farm, and other Wrongs did to him the said *C.* to the grievous Damage of him the said *C.* and against the Peace of our Lord the King, &c. And whereupon the said *C.* by *J. J.* his Attorney, complained

plains, That whereas the said R. on the 10th Day of *October* in the eighth Year of the Reign of our now Sovereign Lord King *George* the second, &c. at *Pewsey* aforesaid in the County aforesaid, had demised to the said C. the said first above mentioned six Acres of Meadow, and the first above mentioned six Acres of Pasture, with the Appurtenances; To have and enjoy the same six Acres of Meadow, and six Acres of Pasture, with the Appurtenances unto the said C. and his Assigns, from the 29th Day of *September* then last past, to the full End and Term of five Years then next following, and fully to be complete and ended: By Virtue of which Demise the said C. afterwards, on the same 10th Day of *October*, entered into the Tenements by the said R. to him the said C. demised as aforesaid, with the Appurtenances, and was possessed thereof; and being so possessed thereof the said A. B. afterwards, that is to say, on the 11th Day of *October* in the said eighth Year, at *Pewsey* aforesaid in the County aforesaid, with Force and Arms, that is to say, with Swords, Staves and Knives, entered into the said Tenements, with the Appurtenances; which the said R. demised to the said C. in the Manner aforesaid, for the Term aforesaid, which is not yet expired, and ejected him the said C. out of his said Farm: And also whereas the said W. J. the 31st Day of *October* in the said eighth Year, &c. had demised to the said C. the aforesaid other six Acres of Meadow, and the aforesaid other six Acres of Pasture above-mentioned to have been demised by the said W. J. to the said C. with the Appurtenances;

Lands, &c.

tenances; To have and enjoy the said last mentioned six Acres of Meadow, and six Acres of Pasture, with the Appurtenances, unto him the said C. and his Assigns, and from thenceforth to the full End and Term of five Years thence next ensuing, and fully to be complete and ended; by Virtue of which last mentioned Demise, the said C. afterwards, to wit, on the 1st Day of *November* in the said eighth Year, entered into the said Tenements to him by the said W. demised as aforesaid, with the Appurtenances, and was possessed thereof; And being so possessed the said A. B. afterwards, to wit, on the same 1st Day of *November* in the eighth Year, at *Pewsey* aforesaid in the County aforesaid, with Force and Arms, that is to say, with Swords, Staves and Knives, entered into the said Tenements, with the Appurtenances, which the said W. J. so demised to the said C. in Manner and Form aforesaid, for the said Term which is not yet expired, and ejected the said C. out of his said Farm; and other Wrongs then and there did to him the said C. to the great Damage of the said C. and against the Peace of our said Sovereign Lord the King; whereby the said C. says he injured, and endamaged to the Value of 20*l.* And therefore he brings this Suit, &c.

A De-

*A Declaration in Ejectment by Original,
to be delivered to the Tenant, to compel
him to appear, &c.*

Middlesex, to wit. **L.** late of London, *A Declaration
to be delivered
to the Tenant,
to compel him
to appear, &c.*
ed to answer to *T. L. Gent.* of a Plea, *Lilly 203.*
wherefore with Force and Arms he enter'd
into three Mesuages, 30 Acres of Land, &c.
with the Appurtenances in *H.* which *V. B.*
Spinster, demised to the said *T.* for a Term
not yet past, and ejected him from his said
Farm, and did to him other Wrongs, to the
great Damage of him *T.* and against the Peace
of our Lord the now King, &c. and where-
upon the same *T. L.* by *W. B.* his Attorney,
complains, That whereas she the said *V. B.*
on the 20th Day of *November* in the fifth
Year of the Reign of our Sovereign Lord
George the Second, now King of *Great Bri-
tain, &c.* at *H.* aforesaid, had demised to
the said *T.* the Tenements aforesaid, with
the Appurtenances, to have and occupy the
said Tenements, with their Appurtenances,
to the said *T.* and his Assigns, from the 17th
Day of the same Month of *November* then
last past unto the End and Term of five
Years from thence next following, and fully
to be complete and ended: By Virtue of
which said Demise he the said *T.* entered
into the Tenements aforesaid, with their Ap-
purtenances, and was thereof possessed; and
the said *T.* being so thereof possessed, the a-
foresaid *L.* afterwards, to wit, on the same
20th Day of *November* in the fifth Year a-

Original. foreſaid, with Force and Arms entered into the ſaid Tenements, with the Appurtenances aforeſaid, and ejected him the ſaid T. from his Farm aforeſaid, and did him other Wrongs, to the great Damage of him T. and againſt the Peace, &c. Wherefore he ſaith, That he is the worſe, and hath Damage to the Value of 40*l*. And thereupon he brings this Suit, &c.

Note.

The above Declaration is to be delivered to the Tenant with the following Notice.

To Sir A. B. Knight.

S I R,

Notice.

I Am informed that you are in Poſſeſſion, or claim Title to the Premifſes in this Declaration of Ejectment mentioned, or to ſome Part thereof: And I being ſued in this Action as a caſual Ejector, and having no Claim or Title to the ſame Premifſes, do adviſe you to appear the firſt Day of next *Hillary* Term, in his Maſteſty's Court of King's Bench (or Common Pleas) at *W.* by ſome Attorney of that Court, and then and there by a Rule of the ſame Court to cauſe yourſelf to be made Defendant in my Stead, otherwiſe I ſhall ſuffer a Judgment to be enter'd againſt me, and you will be turned out of Poſſeſſion. I am

Your humble Servant,

L. L.

The

The Affidavit of the Delivery of the Declaration and Notice to such Tenant, is thus :

Y T. Clerk to J. L. Gentleman, one of the Attorneys of this Court, maketh Oath, That he did upon *Saturday* the 17th of this Instant *January* deliver a Copy of the Declaration hereunto annexed unto M. F. then Tenant in Possession of Part of the Premises in the said Declaration mentioned ; and did also on the same Day deliver one other Copy of the said Declaration unto M. the Wife of D. C. one other Tenant in Possession of other Part of the Premises in the said Declaration mentioned ; and also on the same Day did deliver one other Copy of the said Declaration unto D. the Wife of Mr. A. one other Tenant in Possession of other Part of the Premises in the said Declaration mentioned ; and that he did upon *Monday* the 18th Day of *January* last deliver one other Copy of the said Declaration unto Mrs. H. one other Tenant in Possession of other Part of the Premises in the said Declaration mentioned. (Note ; *No Delivery of such Declaration to any Servant of a Tenant in Possession is good, unless it appear that it afterwards came to the Tenant's own Hands or special Knowledge.*) And this Deponent further saith, That he told them all severally, that it was a Declaration in Ejectment ; and that unless they did appear by some Attorney in the Court of King's Bench this present *Hilary* Term, there would be Judgment thereupon against

Curry, &c. the Defendant by Default, and they would be turned out of Possession, or Words to that Effect.

The Form in B. R. of a Rule by Consent in Ejectment, i. e. That the Tenant (or Landlord) be made Defendant, and to confess Lease, Entry, and Ouster.

Michaelmas, the sixth Year of King George the Second.

Rule for the Tenant to be made Defendant, and to confess a Lease, Entry, &c.

Kent, to wit. **I**T is ordered, by the Assent of the Attorneys of both Parties, That *J. S.* be made Defendant, instead of the now Defendant *C. D.* and that he appear without Delay at the Suit of the now Plaintiff (and put in common Bail) and receive a Declaration in a Plea of Trespass and Ejectment for the Tenements in Question, and plead Not guilty thereto without Delay, and upon the Trial of the Issue, shall confess Lease, Entry and Ouster, and insist only upon the Title, otherwise Judgment to be enter'd against the now Defendant *C. D.* by Default. And if upon the Trial of the said Issue the said *J. S.* shall not confess Lease, Entry and Ouster, whereby the Plaintiff shall not be able further to prosecute his Bill, (Writ, if by Original) against the aforesaid *J.* then no Costs or Charges shall be adjudged on such *Non Pros.* But the aforesaid *J.* shall pay to the said now Plaintiff the Costs and Charges to be taxed thereupon: And it is further ordered, That if upon the Trial

In Ejectment.

453

Entry, &c.

Trial of the aforesaid Issue a Verdict shall be given for the Defendant *J. S.* or if it happens that the aforesaid Plaintiff shall no further prosecute his said Bill (Writ) for any other Cause than for not confessing the Lease, Entry and Ouster aforesaid; then the Plaintiff shall pay to the aforesaid *J.* the Costs and Charges to be taxed in that Behalf.

Fr. Page.

H. D. Attorney for the Plaintiff.

T. B. Attorney for the Defendant.

For Costs 12 *l.*

Note; Write in the Margin of the above Rule the Parties Names, the Parcels and Quantities of the Lands, with the Places and County where they lie, and by whom leased.

The like Rule in C. B.

Devonshire, to wit. **I**T is ordered by the Court, by the Assent of *J. R.* the Plaintiff's Attorney, and *D. M.* the Attorney for *C. G.* who claims the Title of the Tenements in Question, that he the said *C. G.* shall be admitted Defendant; And that the same *C.* shall appear without Delay by his said Attorney, who is to receive a Declaration, and thereto plead the general Issue this Term; and at the Trial to be had thereupon, he the said *C.* shall appear in his proper Person, or by his Counsel or Attorney, and confess Lease, Entry and Ouster, of so many of the Tenements in the Plain-

G g 3

tiff's

Entry, &c. tiff's Declaration specified, as are in the Possession of the said Defendant or his Tenants, or of any Person claiming by or under the said Defendant's Title; or that in Default thereof Judgment may be enter'd against the Defendant T. G. the casual Ejector; but that the Proceedings be stay'd against him until Default be made in any of the Premisses. And it is further order'd, by the like Assent, That if by Occasion of such Default the Plaintiff shall become *Nonsuit* upon the Trial, the said C. shall take no Advantage thereof, but shall pay to the said Plaintiff the Costs to be taxed by the Prothonotary: And it is further ordered, That the Plaintiff's Lessor shall be chargeable with the Payment of the Costs to the aforesaid C. which by the Court shall be allowed or adjudged to him (in any Manner.)

Sign'd by both the Attorneys *ut supra*.

And Note; If on a Rule for Judgment the Tenant does not appear, and none hath moved the Court to be made Defendant in his Stead, the Rule (i. e. the Time order'd by the Court) to appear, &c. being expired, Judgment may be sign'd against the casual Ejector, which is usually done with a Release of Damages, or without mentioning any Damages; whereupon you may sue out your Writ of Habere facias Possessionem.

A Rule on Motion for Judgment in Ejectment Nisi, &c. is thus.

EXcept the Tenant in Possession shall appear and plead to Issue within a Week next after the Close of this Term, let Judgment be enter'd for the Plaintiff against C. D. the now Defendant ——— On the Motion of Mr. Serjeant *Caribew*.

*In C. B.
Rule for Judgment, Nisi,
&c.*

By the Court.

A Rule by the Statute 5 Annæ, for Amendment of the Law, to refer to the Master, to compute the Rent in Arrear, and to tax the Lessor's Costs.

IT is ordered, That the Defendant shall bring here into Court 80 l. and thereupon it is referred to Mr. *Clark* to compute the Money being in Arrear to the Lessor of the Plaintiff, issuing out of the Premises in Question; and also to tax the Costs of the said Lessor expended in this Cause; and if the said Lessor shall accept of the Money so computed and taxed by Mr. *Clark* in full Discharge of this Suit; then the said 80 l. to be paid to the said Lessor or his Attorney out of the Court. And if he shall not accept thereof, and it shall appear on the Trial of the Issue, that the said Lessor hath no Title to the Premises in Question, but only for the not paying of the Money so being in Arrear, then a Verdict shall be given for the Defendant ——— On the Motion of Mr. *Lacy*.

*In B. R.
Rule for the Master to compute the Rent Arrear, and to tax the Lessor's Costs,
&c.*

By the Court.

But

Declarations, &c.

But Note ; If the Tenements you would recover are not inhabited, or there be no Tenant in Possession of the Premises, you are to execute an Ejectment Lease thereon in the following Form.

A Lease in
Ejectment
where there is
no Tenant in
Possession, &c.

THIS Indenture made, &c. between J. A. of L. in the County of M. Tanner, of the one Part, and W. R. of, &c. Gentleman, of the other Part, witnesseth, That he the said J. A. for divers good Causes and Considerations him thereunto moving, hath demised, granted, and to farm letten, and doth by these Presents demise, grant, and to farm let unto the said W. R. i. e. (the Attorney) all that his Farm or Mesuage, &c. commonly called or known by the Name of, &c. situate, lying and being in the Parish of, &c. in the said County of M. and late in the Possession or Occupation of one H. D. To have and to hold the Premises aforesaid, with the Appurtenances, from the Date of these Presents unto the full End and Term of three, four, five, &c. Years from thence next ensuing and fully to be complete and ended ; provided always and upon Condition, that if the said J. A. his Executors or Administrators, shall at any Time after the 30th Day of this present May tender to the said W. R. his Executors or Administrators, one Shilling of lawful Money of Great Britain, then this present Indenture, and every thing herein contained, shall be void and of none Effect (any thing herein contained to the contrary in any wise notwithstanding.) In Witness whereof the Parties aforesaid have hereto interchangeably set their

Hands

Ballston's
Phyics.

In Ejectment on

Hands and Seals the Day and Year first above written.

457

Leases.

On Execution of which Lease you may deliver your Declaration in Ejectment, as before is shewn.

Note ; These and all other Affidavits must be made on a double sixpenny Stamp.

Note also ; All Rules by Consent are to be signed by the Attorneys both of the Plaintiff and Defendant, and in the King's Bench by one of the Judges (as before is shewn) whose Clerk takes 1 s. for the Judge's Hand ; after which you carry the Rule, which is without any Stamp, to the Clerk of the Rules, who keeps it and draws up a Rule of Court on a double six-penny Stamp, for which you pay him 5 s. and if (on Motion) your Affidavit appears to be a Country Affidavit (i. e. not sworn before one of the Judges of the Court) you also pay him 2 s. more for filing your Affidavit.

Directions touching Rules by Assent, &c. in B.R.

But in the *Common Pleas* an Appearance is to be entered with the *Filacer*, for which you pay 2 s. and then you carry the Rule with your Plea to the *Prothonotary*, to whom you also pay 2 s. for entering the Plea ; and afterwards the *Secondary* keeping that Rule will make you two Rules to the same Purport, each on a double six-penny Stamp, for which, and filing the Affidavit, you pay 8 s. one of these Rules you annex to the Copy of the *Issue*, and the Defendant's Attorney is to pay for his Part thereof, when you deliver the same

In C. B.

Leases.

same with the Issue to him; upon the Back whereof you may give him Notice of Trial, as usual.

And herewith I shall conclude this Title of *Ejectments*, which being extended beyond its Limits, I am obliged to omit some Precedents at first designed to have been included in this Treatise, viz. *Homine Replegiando's*, *Prohibitions*, and *Consultations*, *Quare Impedit*, *Replevins*, &c. the Forms of which may be seen in the *English Lawyer* already by me published: And therefore I shall only add in this Collection some necessary Precedents and Observations touching *Actions of Trespass*, as they are and ought to be distinguished from those of *Trespass on the Case*, which you will find before in the Head of *Malseazance*, under the Title *Actions on the Case*.

of

Of DECLARATIONS, &c. In TRESPASS.

AN Action of Trespafs generally lies *Trespafs where it lies.* where any Force or Violence is illegally done to the Person, either of a Person, or of his Wife, Children or Servants, or of Lands, Closes, Woods, Pastures, &c. or of his Houses, Gardens, Fisheries, Fairs, Markets, Pounds, &c. or of his Goods and Chattels, either animate, as Horses, Sheep, Dogs, &c. or inanimate, as Household Goods, his Wares, Commodities, &c. of all which I shall give some Precedents.

And first, for a Trespafs done to the Person, it lies either for a *Menace*, which deters one from going about or transacting his lawful Affairs; but herein I conceive some Malice ought to appear, and not to be founded on Words of mere Heat and Passion; and the Menace must threaten a Killing, Wounding, or Beating; and so Loss or Damage must follow to the Party threatened, by the Occasion of such Menace. *See 18 E. 4. 28. 10 E. 4. 28. 7 E. 4. 24. 3 H. 6. 18.* *1st Where done to the Person.* *Menace.*

Or for an *Assault*, as where one unlawfully *Assault.* sets upon me, and attempts or endeavours to beat me, or to strike me, or where I am within his Reach, he strikes at me, or even holds up his Stick to strike me, or thrust or push at me, or throw Stones at me, though he does not hit me; and so if one throws Drink,

Assaults.

Drink, &c. in my Face, or on my Clothes, &c. but if one holds up and shakes his Stick, or throws Stones at me at a great Distance, so that I am in no Danger of being struck, or if he does any of the precedent Acts merrily or accidentally, and not purposely, no Action lies.

Battery.

And so it is even in the Case of *Battery*, which properly is an unlawful beating or striking, if such striking, &c. be against his Will, or by Accident, or unavoidable Necessity, no Action lies.

Maibem.

Maibem, is where by such *Battery* I am deprived of the Use of any principal Member of my Body, as a Hand, Leg, Finger, Eye, Fore-Tooth, &c. so that I am thereby more unfit for publick Service. For this I may have this Action, or an Appeal of *Maibem*, and recover Damages according to the Hurt done me; and if it fall within the Stat. Car. 2. commonly called Sir *John Coventry's* Act, the Party may be indicted, and suffer Fine and Imprisonment during Life; but if the Hurt be small, and no Dismembering of the Body, an Action of *Trespass* only lies. 2.

Sir J. Coventry's Act.

Imprisonment.

Imprisonment, (unlawful) is either where there is no good Cause or Ground for it, or where he that does it has no good Authority, or where 'tis done in a wrong Manner, i. e. where the Authority is not rightly executed, as if one arrests at a forbidden Time, or in a forbidden Place, or puts one in a wrong Prison, and the like.

False Imprisonment.

And Note; every undue Restraint of Liberty is *False Imprisonment*, as where one without Cause lays hold on me, and holds me forcibly in his Arms, or forcibly keeps me in his own

In Trespass on

461

own or another's House, &c. or ties me to a Tree or Post, or puts me in the Stocks, &c. or any other Way restrains me of my Liberty against my Will. See 9 Co. 66, 69. *Assaults, &c.*

So if one to whom I owe Money, or have done a Trespass, &c. shall of his own Head, without any Warrant, imprison or restrain me till I pay him the Debt, or satisfy him for the Trespass, &c. or till I enter into a Bond, or Statute, or execute a Release, &c. I may have an Action of Trespass and false Imprisonment against him.

And yet where I am duly imprisoned by a legal Warrant, although the Action or Suit be false or feigned (as where no Money is due, or the Debt paid, &c.) 'tis said in such Cases I can't have this Action (See 43 E. 3. 35.) But I may have a special Action on the Case against the Prosecutor, if it appear to be malicious; see before Tit. Actions on the Case.

Note.

A Declaration on an Assault, &c. in B. R.

Michaelmas 5 George I.

Kent, to wit. *Abraham Warwick* complains of *John Soames* in Custody of the Marshal of the Marshalsea, &c. (*vide infra*) for that he the said *John* on the 30th Day of *June* in the fourth Year of the Reign of the Lord *George*, now King of Great Britain, with Force and Arms, to wit, with Swords, Staves (Clubs) and Knives (Daggers) at *Maidstone* in the County aforesaid, made an Assault upon him *A.* and him beat, wounded,

In B. R.
Assault. See
M. S. 1 Mod.
Intr. 386.

Assaults.

ed, and evilly treated; and then and there did to him other Enormities (Wrongs) against the Peace of the said Lord the now King, and to the Damage of him *A.* 10*l.* And thereupon (thereof) he brings his Suit.

Thomas Basset by *R.*

Burt, Attorney, for
the Plaintiff.

R. Greenhill Attorney
for the Defendant.

Pledges of } *John Doe*,
Prosecution } *Rich. Roe*.

The like Declaration in C. B.

In C. B.
The like.

Middlesex, to wit. *A.* *B.* late of *Westminster* in the said County, Esq; was attached to answer to *C. D.* of a Plea, wherefore with Force and Arms, at *W.* aforesaid, he made an Assault upon him *C.* and then and there beat, wounded, and evilly treated him, and did other Wrongs to him: And whereupon he the said *C.* by *W. P.* his Attorney complains, That the said *A.* on the fifth Day of *November* in the sixth Year of the Reign of our Lord, the said now King, with Force and Arms, to wit, with Swords, Staves, Fists and Knives, at *W.* aforesaid made an Assault upon him the said *C.* and beat, wounded, and evilly treated him, so that his Life was despaired of, and then and there did other Wrongs to him, to the great Damage of him the said *C.* and against the Peace of our Lord the said now King, his Crown and Dignity; And wherefore he saith, That he is the worse, and hath Damage, &c. as

To either of which Declarations may be added,
a Battery and Wounding thus : viz. after
(evilly treated) say,

And also then and there with a certain Gun *Wounding.*
called a Musket (Pistol, &c.) shot and dis-
charged certain leaden Shot, (Bullets, &c.)
upon and into the Body of him the said C.
whereby the same C. became grievously wound-
ed, so that his Life was greatly despaired of,
and did other Wrongs to him, &c. or if the
Wounding be of another kind, set it forth as
it is (in general.)

But if the Party was imprisoned, it must *Imprisonment.*
be laid in your Declaration in C. B. thus :
After the first *evilly treated, say,* And also
took and imprisoned him the said C. and him
so in Prison, for a long Time detained, and
did other Wrongs to him, (&c. as above) to
the second *evilly treated,* and then add, And
also then and there him took and imprisoned,
and him there so in Prison for a long Time,
to wit, for the Space of sixteen Weeks detain-
ed, contrary to the Laws and Custom of this
Realm of our Lord the King, and then and
there did other Wrongs to him (*as above.*)

By which and other Precedents you may *Note; and see*
observe, that the Method in C. B. is in Effect *the Form in*
to press the same Charge twice over, which *C. B. post*
I think is needless, and may be well avoided
by setting forth in the former Part of the
Declaration the Nature of the Action only in
general, as assaulted, beat, wounded, or im-
prisoned, as the Case is, and in the later
Part thereof to set it forth more particularly,
and not to repeat all the same Matter and

Words

Person.

Words twice over, as many do ; and therefore I think the King's Bench Forms in this Particular are more eligible, viz.

B. R.
*A Declaration
on an Assault,
Battery, and
false Imprison-
ment.*

Note.

London, to wit. **A.** B. of, &c. complains of C. D. being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, being before the King himself, for that, That he the said C. on, &c. with Force and Arms (&c. *supra*) at, &c. made an Assault upon him the said A. and beat, wounded, imprisoned, and evilly treated him; and also continued and detained him the said A. in Prison for a long time, to wit, for the Space of sixty Days, against the Will of him the said A. and contrary to the Laws and Customs of this Realm, and did other Wrongs to him, &c. (*as before.*)

But if an Infant is Plaintiff, it must be in this Form by his next Friend or Guardian.

In B. R.
*Declaration by
an Infant by
his next Friend.*

Essex, to wit. **A.** B. by T. B. his Father, who is admitted by the Court of the Lord the now King, before the King himself, to prosecute for the same A. as the next Friend of him the said A. who is within the Age of one and twenty Years, complains of C. D. being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of that, That he the said C. on, &c. at, &c. with Force and Arms, to wit, &c. (*as before.*)

A Cu-

*A Curious Precedent of a Declaration,
Plea, and Issue to Part, with a Re-
plication; Rejoinder and a Demurrer
to other Part, and Judgment thereon;
in an Action of Assault and Imprison-
ment.*

Oxfordshire, to wit. **Zachary Hinds**, late
of **W.** in the Coun-
ty aforesaid, Apothecary, and **John Collesborn**,
late of the same Place, Victualler, were at-
tached to answer to **T. Reynolds** of a Plea,
wherefore with Force and Arms at **Woodstock**
they made an Assault upon him the said **T.**
and beat, wounded, imprisoned, and evilly
treated him, and for a long Time detained
him in Prison, against the Law and Custom
of the Kingdom of our Lord the now King
of **Great Britain**, and did other Wrongs to him,
to the great Damage of him the said **T.** and
against the Peace of our Lord the now King:
And whereupon he the same **T.** by **J. W.** his
Attorney, complains, That they the said **Z.**
and **J. C.** on the first Day of **April** in the third
Year of the Reign of our Lord the now King,
with Force and Arms, to wit, with Swords,
Staves and Knives at **Woodstock** aforesaid, made
an Assault upon him the said **T.** and beat,
wounded, imprisoned, and evilly treated him,
and for a long Time, to wit, for the Space of
thirty Days, there detained him in Prison
against the Will of him the said **T.** and against
the Law and Custom of the Realm of our
Lord the now King of **Great Britain**, and did
other Wrongs to him, to the great Damage

H h

of

C. B.
Assault, Bat-
tery and Im-
prisonment.
Trin. 3 G. 1.
Roll 1598.
Foley.

Person.

of him the said T. and against the Peace of our said Lord the now King: Wherefore he saith, that he is injured, and hath Damage to the Value of 100 l. And thereupon he brings this Suit, &c.

Plea, as to the Force and Arms, and also the wounding, Not guilty.

And Issue to the Residue, Judgment, &c. On a Plea in a Borough Court.

The Plea.

And they the said Z. and J. by M. D. their Attorney, come and defend the Force and Injury, when, &c. and as to the coming with Force and Arms, and also as to the said wounding above supposed to be done to the said T. the said Z. and J. do say, That they are Not guilty: And thereof they put themselves upon the Country; and the said T. doth so likewise; and as to all the rest of the Trespass, Assault and Imprisonment above supposed to be done, they the said Z. and J. do say, That the said T. ought not to have his Action thereof against them, because they say, That before the Trespass above supposed to be done, *to wit*, at the Court of our Lord the now King of Record, called *The Portmoot*, held for the Borough of *New Woodstock* in the said County of *Oxford*, according to the Custom of the said Borough used and approved in the same Borough from the Time whereof the Memory of Man is not to the contrary, at the *Guild-Hall* of the same Borough, on *Monday, to wit*, the 11th Day of *March* in the third Year of the Reign of our Sovereign Lord *George*, now King of Great Britain, before J. *Appletree*, the then Mayor of the said Borough, he the said Z. according to the Custom of the same Court used and approved for the whole Time aforesaid, did bring in the same Court his certain Plea against the said T. R. the now Plaintiff, in a Plea

In Trespass to the

467

Person.

Plea of Trespass on the Case for a certain Cause of Action accruing and arising within the Borough aforesaid, and then and there found Pledges of prosecuting his said Plaintiff, *to wit, John Doe and Richard Roe*; upon which said Plaintiff, for that, that at the same Court it was testified by the said *J. Colesborn* then one of the Serjeants at the Mace of the said Borough, being an Officer of the said Court, That the said *T.* had nothing within the Borough aforesaid, whereby he could be attached at the same Court, held the said 11th Day of *March* in the said third Year of our said Lord the now King, as aforesaid, on the Petition of the said *Z.* according to the Custom of the said Borough, used and approved in the same, for the whole Time aforesaid, the said *J. Appletree*, being then Mayor of the said Borough as aforesaid, commanded him the said *J. C.* then being Serjeant at Mace of the said Borough, and an Officer of the said Court as aforesaid, That he should, according to the Custom of the said Borough, take the Body of the said *T.* if it could be found within the Liberties of the same Borough, and keep him the said *T.* safely, so that he should have his Body at the then next Court of our said Lord the King, to be held before the said *John Appletree*, then Mayor of the said Borough, on *Monday* the 25th Day of the same Month of *March* in the third Year aforesaid, to answer to the said *Z.* in the Plea of his said Plaintiff; by Virtue of which said Precept afterwards, and before the said then next Court, *to wit,* on the 15th Day of *March* in the said third Year of our said Lord the now King, he the said *J. C.* being then so Serjeant at Mace,

Pledges:

Nil habet.

Capias;

Person.

Imprisonment.

and an Officer of the said Court as aforesaid; did at *Woodstock* aforesaid in the County aforesaid, according to the said Custom of the said Borough, by the Direction of him Z. take and arrest the said T. and him the said T. being so arrested, did for Default of Bail, according to the Custom of the said Borough, carry to the Gaol of the same Borough at *Woodstock* aforesaid in the County aforesaid, (he the said J. C. being then and still Keeper of the same Gaol) and detained him the said T. in the said Gaol, during the said Time in the said Declaration mentioned, for want of Bail to the Action or Plaint aforesaid, which said Arrest and Imprisonment are the Residue of the said Trespas, Assault and Imprisonment, whereof the said T. doth above in his Declaration complain: And this they are ready to verify: Wherefore they pray Judgment, if the said T. ought to have his said Action thereof against them, with this, That they the said Z. and J. will verify, That he the said J. did at the said then next Court of Record held for the said Borough as aforesaid, after the issuing of the aforesaid Precept, return the same Precept to have been in all Things served and executed.

Replication.

And the said T. as to the Plea of the said Z. and J. as to the Residue of the Trespas, Assault and Imprisonment aforesaid above pleaded in Bar, saith, That he for any thing by them the said Z. and J. alledged above in the same Plea ought not to be barred from having his said Action thereof against them, because by protesting that no such Precept issued from the said J. *Appletree* to the said J. C.

In Trespass to the

469

J. C. to take and arrest him T. in Manner and Form as they the said Z. and J. have by their Plea above alledged, for Plea he the said T. saith, That the said Z. and J. did of their own Wrong make the said Assault upon him T. and him beat, evilly treated and imprisoned, and him in Prison detained, as he the said T. hath above complained against them; without that, That the said J. C. did at the next Court of Record held as aforesaid, for the said Borough, after the issuing of the said Precept, return the same Precept in all Things served and executed in Manner and Form as they the said Z. and J. have above by pleading alledged: And this he is ready to verify: Wherefore, for that they the said Z. and J. have acknowledged the said Trespass, Assault and Imprisonment to be done as aforesaid, he the said T. prays Judgment, and his Damages by Occasion of the said Trespass, Assault and Imprisonment, to be adjudged to him.

Person.

De injuria
prop. &c.

Traverse.

And the aforesaid Z. and J. as to the said Plea of the said T. as to the Residue of the Trespass, Assault and Imprisonment above by replying pleaded, do say, as before, That he the said J. C. did at the said then next Court of Record, held as aforesaid for the said Borough, after the issuing of the said Precept, return the same Precept in all Things executed in Manner and Form as they the said Z. and J. have by pleading above alledged: And of this they put themselves on the Country.

Rejoinder.

To this Replication the Plaintiff demurs generally, and the Defendants join in the Demurrer

H h 3

as

Person. as usual, upon which a Curia Advisare, &c.
The Plaintiff is entred till from the Day of St. Martin in 14
demurs, &c. Days next, &c. and then there is a further
 Entry of a Judgment on the Roll, which is very
 remarkable, viz.

*A remarkable
 Entry of Judg-
 ment, &c.*

And the said T. for that, That they the
 said Z. and J. do say nothing in Bar of the
 said Action of the said T. as to the beating
 of him T. whereby he the said T. remains a-
 gainst them the said Z. and J. undefended,
 prays his Judgment, and his Damages by Oc-
 casion thereof to be adjudged to him ; and
 for that, That he the said T. ought to reco-
 ver his said Damages by Occasion of that
 Trespass, whereof he is and remains against
 them the said Z. and J. undefended, and be-
 cause it is unknown what Damages he the
 said T. hath sustained by Occasion of that
 Trespass, for which he ought to recover his
 said Damages as aforesaid, and it is (also) un-
 known whether the aforesaid Z. and J. will be
 convicted of the Residue of the said Trespass
 or not ; and that if he be convicted, it is con-
 venient there be but one Taxation of Dama-
 ges made for the whole Trespass specified in
 one Writ ; and that those Damages ought to
 be assessed by the same Jury of the Country :
 Therefore as well as to the Trial of the Issue
 above joined to be tried by the Country, as
 also to inquire what Damages he the said T.
 hath sustained as well by Occasion of the said
 Trespass, whereof the said Parties have put
 themselves in the Judgment of the Court as
 aforesaid ; if it shall happen, That the Judg-
 ment thereupon be rendered for the said T.
 as by Occasion of that Trespass, whereof he

the

In Trespasse to the

the same *T.* remains in the Form aforesaid undefended against the said *Z.* and *J.* It is commanded to the Sheriff, That he cause to come here at the Time aforesaid, *twelve good and lawful Men, &c.*

471

Person.

*Award of a
Special Ver-
dict.*

Note ; The above Demurrer was argued on Friday the 22d Day of November 1717, when Judgment was thereon given for the Plaintiff. See Lilly 447. Lev. Entries 191.

And with this I shall conclude the Head of Trespasses against a Man's Person, and next give some few Precedents of Trespasses against his Wife, Servants, Goods, &c.

A Declaration in Trespass for assaulting a Man's Wife.

Surrey, to wit. *J. K.* and *M.* his Wife, com-plain of *R. F.* being in the Custody of the Marshal, &c. For that, that he the said *R.* on, &c. with Force and Arms, to wit, with Swords, Clubs and Daggers, at the Parish of *D.* in the Borough of *Southwark* and County aforesaid, made an Assault upon her the said *M.* and her the said *M.* then and there beat, wounded, and evilly treated ; so that her Life was greatly despaired of, and then and there did other Wrongs to her against the Peace of our said Lord the now King, to the Damage of them the said *J.* and *M.* 200 *l.* And thereupon they bring their Suit. *Which Form Mutatis Mutandis may also serve for C. B.*

*For Trespass
for assaulting
a Man's Wife.
Lev. Entries
217.*

Person.

A Declaration for assaulting and lying with the Plaintiff's Wife, and detaining her, &c.

In B. R.
For lying with
the Plaintiff's
Wife.

Detainer.

London, to wit. **A** B. complains of C. D. (&c. as in other Declarations in B. R. to) That he with Force and Arms in and upon *Elizabeth* the Wife of the said *A*. at *London* aforesaid, to wit, in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, made an Assault, and beat and evilly treated her, and also her the said *Elizabeth* took, carried away, ravished, and carnally knew, and her from the said *A*. for a long Time, to wit, for the Space of *six Months*, against the Will of him the said *A*. did keep and detain, whereby he the said *A*. lost and was deprived of the Comfort, Fellowship, Aid and Assistance of the said *B*. for the whole Time aforesaid, and did other Wrongs to her the said *Elizabeth*, to the great Damage of him the said *A*. and against the Peace of our said Lord the now King: Wherefore he the said *A*. saith, that he is injured, and hath Damage to the Value of *500 l.* And thereupon he brings this Suit, &c.

Note; The Lines in *Italick* supra, are only to be inserted where the Wife is kept from her Husband. And for other special Declarations of the like Kind, see the *Practising Attorney* last published in *Engilsh*, pag. 152, 153. as also *Lilly's Entries in Latin*, p. 434, 441.

A De-

*A Declaration in Trespas for assaulting
(and beating) one's Servant.*

A. B. (*Ec. as above to*) with Force and Arms, at *F.* in the County aforesaid, in and upon *G. H.* a Servant of the said *A.* did make an Assault, and him the said *G.* then and there did beat, wound, and evilly treat, so that he the said *G.* could not possibly attend to or perform the lawful Business of the said *A.* whereby the said Business remained undone and the said *A.* lost and was deprived of the Service of his said Servant from the said Day of, *Ec.* to the Day of exhibiting this Bill, and did to the said *A.* other Wrongs against the Peace (*Ec. as above.*)

*In B.R.
Assault on a
Servant.*

*Hitberto of Trespas to the Person, next as
to his Goods, 1. animate; or, 2. inanimate.*

*A Declaration for wrongfully impounding
the Plaintiff's Cattle.*

A. B. (*Ec. as above to*) That he with Force and Arms at *D.* in the said County, did take and impound, without any reasonable Cause, the Cattle, *to wit*, one Cow, two Bullocks, *Ec.* of him the said *A.* then and there found, of the Price of 20 *l.* And the said Cattle being so impounded did there detain for the Space of three Days, so that one of the said Bullocks died in the said Pound, and the other became very much the worse, contrary to the Law and the Custom of

*In B.R.
For impound-
ing Cattle.*

Cattle.

of England, and against the Peace of our Lord the now King; wherefore he the said A. saith, that he is injured, (Ec. ante.)

The like in C. B.

In C. B.

The like.

Note this Precedent.

A, B. late of and C. D. late of
were attached to answer to E. F. of a
Plea, wherefore with Force and Arms, and
without any reasonable Cause, at 7. in the
said County, they took and impounded the
Cattle of him the said E. and did other Wrongs
to him, contrary to the Law and Custom of
England, and against the Peace of our Lord
the now King; And whereupon he the said
E. by W. B. his Attorney complains, that they
the said A. and C. on the first Day of *Novem-*
ber in the sixth Year of the Reign of our
Lord the now King at 7. *aforsaid*, with Force
and Arms, and without any reasonable Cause,
took and impounded the Cattle, *to wit*, three
Cows, &c. of him the said E. of the Price of
5*l.* and the same Cows then and there so im-
pounded they the said A. and C. for a long
Time, *to wit*, for the Space of two Days,
therein detained, contrary to the Law and
Custom of *England*, and did other Wrongs
to the said E. against the Peace of our said
Lord the King: Wherefore he saith, &c.

*Taking away
a Setting Dog.*

*Or if it be for taking a Setting-Dog, &c. say
as above to* With Force and Arms, and with-
out any reasonable Cause, at D. *aforsaid*,
did take and carry away one Setting-Dog of
him the said E. of the Price of 5*l.* and did
to him other Enormities, (*Ec. as above to*)

com-

complains, that he the said *A.* on *such* a Day in *such* a Year of the now King, at *D.* aforesaid (or at *F.* in the said County of *M.*) did then and there with Force and Arms, and without any reasonable Cause, take and carry (lead) away one Setting-Dog of him the said *E.* of the Price of 5 *l.* and did to him other Enormities against the Peace (*&c. as before.*)

*A Declaration for a wrongful Taking, &c.
the Plaintiff's Goods.*

Somerset, to wit. **A.** B. Gentleman, complains of *C. D. E. F.* For taking and *G. H.* being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, That they the said *C. D. E. F.* and *G. H.* on, *&c.* with Force and Arms unlawfully entered into the House of the said *A.* in the Parish of *N.* in the said County of *S.* and then and there took and eat up the Meat and Drink of him the said *A.* to the Value of 50 *s.* and also then and there took and carried away the Goods and Chattels of the said *A.* then and there found, to the Value of 20 *l.* and also then and there burnt up, and otherwise used and destroyed the Wood and Coals of the said *A.* then and there found, to the Value of 10 *s.*

In B.R.
For taking
Goods, &c.
Note.

His Viſuals

And also kept and used the Possession of the said House of the said *A.* for the Space of ten Days then next following, whereby the said *A.* could not have the Use or Benefit of his said House, for (during) that whole Time; and did to him other Enormities, against the Peace of the said Lord the now King, and to the

Goods, &c. the Damage of the said *A.* 200 *l.* And thereof he brings his Suit.

Door.
Wainscot.
Windows.

And also then and there broke, cut, tore, and spoiled one wooden Door of the said *A.* then and there found, of the Value of 40 *s.* And also then and there broke and spoiled the Wainscot of the said *A.* (or the Glass Windows of the said *A.*) belonging to the afore-said House, the Value of 3 *l.* in like Manner then and there found.

Note; Any of the above or the like Clauses beginning (And also) may be added or omitted as there is Occasion.

Or it may be for breaking and entering a Stall in a Fair or Market, viz.

Shed.
Stall.

That he such a Day, &c. with Force and Arms broke and entered the Close of the said *A.* at *S.* in the said County of *C.* and then and there broke and pulled down one Shed (or one Stall and one Standing) of the said *A.* of the Value of 40 *s.* containing divers Goods, Wares, and Merchandizes of the said *A.* then exposed for Sale, &c. whereby he the said *A.* lost and was deprived of the Profit and Advantage of his said Close and Shed (Stall, Standing) and did to the said *A.* other Enormities, &c. see before.

Note.

But Note; Where a consequential Damage is laid, as the Loss of the Profits of his Close, or of the Sale of his Goods, &c. an Action of Trespass on the Case, or Malfeasance, is most proper. See before Malfeasance under Title Case.

A De

A Declaration for a Trespass in a Garden by spoiling his Gravel Walks, &c.

THAT the said *B.* such a Day and Year *Trespass in*
 with Force and Arms, broke and en- *Gardens laid*
 ter'd the Garden of him the said *A.* at *D.* in *divers Ways.*
 the said County; and then and there with
 one Gelding and one Mare (or with Horses,
 Cattle, Hogs, &c.) spoiled and ruined the
 Gravel-Walks (or pulled up, broke, and de-
 stroy'd the Trees, Plants, Fruits, &c.) of the
 same Garden: And also, That he the said *B.*
 afterwards, to wit, on the (same Day and
 Year) with Force and Arms aforesaid, broke
 and enter'd the Garden of the said *A.* at *D.*
 aforesaid in the same County, and then and
 there with one other Gelding, and one other
 Mare (&c.) trod down, subverted, rooted
 up, destroy'd, &c. one other Gravel-Walk,
 (&c. as the Case is) and did other Wrongs
 to him the said *A.* (&c. as before.)

A Declaration for a Trespass in a Fishery.

Essex, to wit. *E. P.* and *W. K.* complain of *For entering the*
E. J. R. being in the Cu- *Plaintiff's*
 stody of the Marshal of the *Marshalsea* of our *Fishery, and*
 Lord the King, before the King himself, of *taking their*
 that, that he the said *J.* on the second Day *Fish.*
 of *May* in such a Year, with Force and
 Arms entered and fished in the several Fishe-
 ries of them the said *E.* and *W.* within the
 Manor of *B.* in the said County of *E.* and
 then

Fishery.
Note.

*ad Count of
 another taking,
 &c.*

then and there took and carried away from and out of the said Fishery 50 Bushels of Oysters, 1000 Soles, 1000 Flounders, 1000 Plaice, 200 Thörnbacks, being the Fish of the said *E.* and *W.* to the Value of 40*l.* And also of that, That he the said *J.* on the third Day of *May* in the Year aforesaid, with Force and Arms, enter'd and fished in the several Fisheries of the said *E.* and *W.* at a certain Place called *G.* lying within the said Manor of *B.* in the County aforesaid; and then and there took and carried away certain Fishes of them the said *E.* and *W.* to wit, 100 Bushels of Oysters, 2000 Soles (*and so set forth the Number and Kinds of the Fish taken, according to your Proof*) of the Value of 60*l.* (*or what Value you can prove*) and then and there did Wrongs to the said *B.* and *W.* against the Peace of our Lord the now King, &c. (*see before.*)

A Declaration for rescuing a Horse that the Plaintiff was driving to Pound.

*In C. B.
 Rescuing a
 Horse driving
 to Pound.*

Essex, to wit. *A.* *B.* late of ——— was attached to answer to *C. D.* of a Plea, That whereas the same *C.* had by *J. S.* his Servant, caused to be taken one Horse, doing Damage in certain Lands of him the said *C.* called *Black-Acre*, at *D.* in the said County of *E.* and would for that Damage so done have impounded the same Horse by his said Servant, according to the Law and Custom of *England*, he the said *A.* with Force and Arms then and there rescued that Horse from being impounded, and other

In Trespass on a

479

Pound
breach.

other Enormities did to him the said C. whereupon he the said C. by G. H. his Attorney, complains, That whereas he the same C. on the — Day of — in the — Year of the Reign of our Lord the now King, had by J. S. his Servant, caused to be taken one Horse, doing Damage in certain Lands of him the said C. called *Black Acre*, at D. in the said County of E. and would for that Damage have (*Ec. repeating again the same Matter as is usual in C. B.*) See hereafter, pag. . . . how such Repetitions may be avoided; and see the following Precedent here for the Conclusion.

*For breaking a Pound, and taking thence
a Mare, not paying the Damage.*

A. B. (*Ec. as above to*) That whereas the same C. had at D. in the County aforesaid, taken a certain Mare doing Damage there in the Lands of him the said C. and had impounded the said Mare, according to the Law and Custom of *England*, he the said A. with Force and Arms broke that same Pound, and took and led away the said Mare from out of the said Pound; and did other Wrongs to the said C. and whereupon he the said C. by G. H. his Attorney, complains, That whereas he the same C. on the first Day of *November* in the third Year of the Reign of our Sovereign Lord *George the Second*, now King of *Great Britain*, had at D. aforesaid in the said County of E. taken a certain Mare doing Damage there in the Lands of him the said C. and had impounded the said

In C. B.
For breaking a
Pound, &c.

Note this Pre-
cedent.

Closes, &c. said Mare, according to the Law and Custom of *England*, he the said *A.* on the said first Day of *November* in the third Year aforesaid, with Force and Arms, to wit, with Swords, Staves, and Knives, there broke the said Pound, and took and led away the said Mare from and out of the said Pound; and other Wrongs to him the said *C.* then and there did, to the great Damage of him the said *C.* against the Peace of our Lord the now King: Wherefore he saith, That he is injured, and hath Damage to the Value of 10*l.* And thereupon he brings this Suit, &c.

For breaking the Plaintiff's Close, and eating up and treading down his Grass, &c.

In B. R. **Middlesex, to wit.** **A.** B. complains of **C.** **D.** being in the Custody of the Marshal, &c. for that he, on such a Day in such a Year, with Force and Arms enter'd the Close of him the said *A.* called *Combe-Close*, at *D.* in the County aforesaid, and then and there with his Feet in walking trod down and consumed the Grass of the said *A.* then and there growing to the Value of 100*s.* And also at divers other Days and Times between such a Day and such Day, with Horses, Oxen, Cows, Hogs and Sheep, did eat up and tread down and consume other Grass of the said *A.* then there growing to the Value of 50*s.* and then and there did other Wrongs to the said *A.* against the Peace (*&c. as before.*)

For

*For breaking his Close, treading down his
Grass, and carrying away his Corn.*

A. B. complains of C. D. and E. F. being In B. R.
in the Custody of the Marshal, &c. Breaking his
that they on [such a Day] in [such a Year,] Close, &c.
with Force and Arms broke and enter'd the and carrying
Close of the said A. called D. Close, at L. in away his Corn.
the County aforesaid, and with their Feet in
walking trod down and consumed the Grass
and Corn of him A. then and there grow-
ing, to wit, his Wheat, Barley, Oats, Pease,
Beans and Rye, to the Value of 10*l*. And
also that they the said C. and E. did after-
wards, *i. e.* on the same (or some other) Day
in the Year aforesaid, with certain Beasts, to
wit, Horses, Mares, Oxen, Cows, Hogs,
Sheep and Geese, eat up, tread down, spoil,
and consume certain other Goods and Chat-
tels of him the said A. to wit, 20 Sheafs of
Bread Corn, 30 Sheafs of Maslyn Corn, 40
Sheafs of Rye, 50 Bundles of Pease, of him
the said A. then and there found, to the Va-
lue of 20*l*. And then and there did other
Wrongs to the said A. (&c. as before.)

*A Declaration in Trespass by a Parson,
for breaking and entering his Church.*

Q.

A. B. Clerk, complains of C. D. E. F. G. In B. R.
H. and J. K. being in the Custody of For breaking
the Marshal, &c. of that, That they the said and entering the
C. E. G. and J. on the first Day of Decem- Church.
I i ber

Church, &c. *ber* in the sixth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. with Force and Arms broke and enter'd the *House of him the said A. called the Church at S.* in the County aforesaid, and for a long Time, to wit, for the Space of six Weeks thence next following, *detained and kept him from and out of the possessing of his aforesaid House*; whereby he the said *A. B.* lost and was deprived of the Use, Benefit and Advantage of his aforesaid House, during the whole Time aforesaid; And also of that, That they the aforesaid *C. E. G.* and *J.* afterwards, to wit, on the same first Day of *November* in the sixth Year aforesaid, at *L.* aforesaid, with Force and Arms broke and enter'd the House of him the said *A. B.* called the *Parsonage House at D.* in the County aforesaid, and then and there broke and spoiled the Windows of the said House, to wit, 500 Squares of the Glass of him the said *A.* being Parcel of his said House, to the Value of 100*s.* And also of that, That they the aforesaid *C. B. G.* and *J.* afterwards, to wit, on the same first Day of *November* in the sixth Year aforesaid, at *L.* aforesaid, did root up and take and carry away one Elm-Tree of him the said *A. B.* then and there growing, of the Value of 4*l.* and other Wrongs then and there did to him the said *A.* against the Peace of our said Lord the now King, to the Damage of him the said *A.* 100*l.* And thereupon he brings this Suit, &c.

And Parsonage House.

And taking away Elm-Trees.

See the Law touching this Matter in The Compleat Incumbent, Chap. 39.

But

But where any Person has a Special Property in a Seat in the Church, or the like, there an Action will lie in the Owner's own Name, for taking, breaking, or carrying away of a Seat in a Church, as in the Case of Finch against Reynolds, Trinity 3 Geo. 1. in which Case the Declaration was as follows :

Shropshire, to wit. **J**ohn Reynolds, late of Bagley in the County aforesaid, was attached to answer to Roger Finch, Esq; of a Plea, wherefore with Force and Arms at Hordely in the Parish Church of Hordely in the County aforesaid, he took, cut, broke, and carried away a certain Bench, or antient Seat of him the said Roger, of the Value of 100s. and did other Wrongs to him, to the great Damage of him the said Roger, and against the Peace of our said Lord the now King; and whereupon he the said Roger by J. Lacon his Attorney, complains, That the aforesaid John on the third Day of April in the third Year of the Reign of our Lord the now King, with Force and Arms took, cut, broke and carried away a certain Bench or ancient Seat of him the said Roger, at Hordely in the Parish of Hordely aforesaid, of the Value of 100s. and did other Wrongs to him, to the great Damage of him the said Roger, and against the Peace of our Lord the now King; wherefore he saith, That he is injured, and hath Damage to the Value of 20 l. And thereupon he brings this Suit, &c.

In C. B.
Trespass in
taking, break-
ing, &c. a
Seat in a
Church.

But Note; To this Declaration the Defendant pleaded a long and special Plea in Justification

Declarations, &c.

484

Church, &c. cation of the Trespass, and in Bar of the Plaintiff's Action; whereto the Plaintiff reply'd, De Injuria sua propria absq, tali causa; to which Replication the Defendant demurred; which being argued November 25, 1717, Judgment was for the Defendant.

Touching Seats in Churches and Chapels, see The Compleat Incumbent, pag. 382 to pag. 388.

O F

PLEAS *in* TRESPASS.

The most usual Plea in an Action of Trespafs *Pleas in Tres-*
and Assault, is Not guilty; in the like *pass.*
Form, as it is pleaded in Trespafs on the *Not guilty.*
Case, which see before in Title Case, under
the Head of Malefeasance; or if the Plain-
tiff begun the Assault, the Defendant may
justify by a Plea of Son Assault Demesne, *Son Assault.*
viz. That the Plaintiff himself begun the *Justification.*
Assault; the Form of which see above in this
Title; so in Trespafs for Breach of his Close,
or entering into Lands, &c. the usual Plea
is Not guilty; or else a Justification may
be pleaded ut infra, wherein you will find
most of the Forms necessary to be observed in
such Pleas, either of Not guilty, or a Justi-
fication in Trespafs; as also the Form of
New Assignments, &c. Note also, The fol- *New Assign-*
lowing Declaration is contrived as a Prece- *ment.*
dent to avoid that Repetition frequently used
in C.B.

Plead, &c.

A brief Declaration in Trespass, for breaking and entring his Close, &c. against two who plead severally.

In C. B. Trespass for breaking, entring his Close, &c.

Devonshire, to wit. R. B. late of L. in the County aforesaid, and *W. H.* late of L. aforesaid, were attached to answer unto *E. B.* of a Plea of Trespass, wherefore on such a Day and Year, with Force and Arms, they broke the Close of him the said *E.* at *G.* and his Grass there late growing, to the Value of 10*l.* with certain Cattle (*naming their Kind as before, pag. 480, 481,*) then and there eat up, trod down, and consumed, and did other Wrongs to him, to the Damage of him the said *R.* 10*l.* and against the Peace of our said Lord the now King, (*&c. as before.*)

Plea of one Defendant, Not guilty, to the Force.

And the said *R. B.* and *W. H.* by *R. S.* their Attorney, come and defend the Force and Injury, when, &c. and as to the coming with Force and Arms, they and each of them say, *Not guilty*; And as to the Residue of the said Trespass above supposed to be done, the said *R. B.* saith, That the said *E.* ought not to have his said Action, because he saith, that the Place in which the said Trespass is supposed to be done, is, and at the same Time of that Trespass so supposed, was a certain Place called the *Penns*, containing in itself 500 Acres of Land in *G.* aforesaid, extending itself from the South, from a certain Place called *G.* in *L.* aforesaid, unto a certain Place called *H.* in *G.* aforesaid, towards the

the North-West, and so extending from thence to C. towards the East, and that he the said R. at the Time of the said supposed Trespass, and long before was seised in his Demesne as of Fee, of and in three Mesuages, and 26 Acres of Land, with the Appurtenances, in L. aforesaid: And that he and all those whose Estate he hath in the said three Mesuages, and 26 Acres of Land, with the Appurtenances, from the Time to the contrary whereof the Memory of Man is not, have had and been accustomed to have Common of Pasture of and in the said Place, called the *Penns*, within the Bounds and Limits aforesaid, with all and all Manner of his Cattle and living Creatures whatsoever, at all Times of the Year, by Virtue of which the said R. B. did at the said Time of the supposed Trespass, put his said Cattle in the said Close, in the said Place called the *Penns* in G. aforesaid, within the aforesaid Bounds and Limits, to feed and eat on the said Grass there then growing, for the using his said Common during the Time aforesaid, as it was lawful for him to do; which Things are the same breaking of the Close, treading, consuming, and eating up the Grass, whereof the said G. now above complains: And this he is ready to verify: Wherefore he prays Judgment, if he the said E. ought to have his said Action thereof against him.

Pleas, &c.

And to the resp, justifies for common.

And the said W. H. saith, That the said *The Plea of* E. ought not to have his said Action thereof *the other Defendant.* against him, because he saith, that the Place in which the said Trespass is supposed to be done, is, and at the said Time of that Trespass

Pleas, &c.

Claiming Title to Common.

pass so supposed was the said Place called the P. and that he at the Time of that supposed Trespass, and long before was likewise seised in his Demesne as of Fee, of and in two Mesuages and 20 Acres of Land, with the Appurtenances in L. aforesaid, and that he and all those whose Estates he hath in the said two Mesuages and 20 Acres of Land, with the Appurtenances, from the Time beyond the Memory of Man have had, and were accustomed to have, *Common of Pasture* in the said Place, called the P. within the aforesaid Bounds and Limits, with all and all Manner of his Cattle and living Creatures whatsoever, at all Times of the Year; by Virtue of which the said W. G. at the Time of the said supposed Trespass, did put his said Cattle into the said Close, in the said Place, called the P. in G. aforesaid, within the aforesaid Bounds and Limits, to feed on and eat the said Grass there then growing, for the using of the said Common, by the Time aforesaid, as it was lawful for him to do; which Matters are the same breaking of the Close, treading down and consuming, and eating up of the said Grass, whereof the said E. doth now above complain: And this he is ready to verify; Wherefore (*&c. as in the former Plea.*)

Repliation,
setting forth a
New Assignment.

And the said E. R. saith, that he by any Matter before alledged ought not to be precluded from having his said Action against the said R. B. and W. H. because he saith, that the said Close, and also the Place in which the Trespass was done, whereof he the said E. doth now above complain, are, and

at

at the said Time in which the said Trespass was done, were as well the said Place, called the *P.* in *G.* aforesaid, as one other Place called the *H.* in *G.* aforesaid; whereupon for that the said Place they the said *R.* and *W.* have above mentioned, doth not answer to the said Trespass in the said Place, called *The H.* newly as above assigned to be done, he prayeth Judgment and his Damages by Occasion of that Trespass, to be adjudged unto him: And as to the said Plea of the said *R. B.* above pleaded, the same *E.* saith, that he by any Matter in the said Plea above alledged ought not to be barred from having his said Action against the said *R.* because he saith, that he himself at the Time wherein the said Trespass was done, was seised in his Demesne as of Fee, of and in the Manor of *G.* in *C.* aforesaid, whereof the said Place, called the *P.* to the said Time in which the said Trespass was done, was Parcel, until the said *R.* the Day and Year aforesaid, in the said Declaration before specified, did break the Close of him the said *E.* aforesaid, at *G.* aforesaid in the said Place, called the *P.* within the aforesaid Bounds and Limits, and did then and there, with his said Cattle, by the Time aforesaid, eat up, tread down, and consume his Grass there growing, to the Value of 10*l.* in Manner and Form as the same *E.* doth above against him complain; *With- Traverse.*
out this, That the said *W. C.* and all those whose Estate he hath in the said three Mesuages, and 16 Acres of Land, in the Bar of the said *R.* before specified, from the Time beyond the Memory of Man hath had and accustomed to have Common of Pasture
of

Pleas, &c.

of and in the said Place, called the P. in G. aforesaid, within the Bounds and Limits aforesaid, with all and all Manner of his Cattle and Living Creatures whatsoever, at all Times of the Year, as the said R. before in the said Bar hath alledged: And this he is ready to verify: Wherefore, for that the said R. hath above acknowledged the said Trespas done in the said Place, called the P. in G. aforesaid, he prayeth Judgment, and his Damages by Occasion of that Trespas, to be adjudged unto him.

*To the second
Defendant's
Plea.*

And as to the said Plea of the said W. H. before pleaded, the said E. saith, that he by any Matter in the same Plea before alledged ought not to be precluded from having his said Action, because he saith, that he himself at the said Time of the said Trespas done was seised in his Demesne as of Fee of and in the said Manor of G. whereof the said Place, called the P. is, and at the said Time, in which, &c. was Parcel, until the said W. H. on the Day and Year aforesaid, in the said Declaration before specified, enter'd the Close of him the said E. in G. as aforesaid; *Without this*, That the said W. H. and all those whose Estate he hath, in the said two Mesuages, and 20 Acres of Land, with the Appurtenances from the Time, &c. *as above*. And this he is ready to verify: Wherefore, &c. *as before*.

Traverse.

Rejoinder.

And the said R. B. as to any Trespas in the said Place called the H. in G. aforesaid, of the new Assignment made, supposed to be done, saith, that he is *Not guilty* thereof:
And

And of this he puts himself on the Country; *Pleas, et.*
 And the said *E.* likewise, &c.

And as to the said Plea of the said *E.* before in replying pleaded, the said *R.* as before, saith, That he and all those whose Estate he hath in the said three Mesuages, and 16 Acres of Land, with the Appurtenances, from the Time beyond the Memory of Man hath had, and been accustomed to have *Common of Pasture*, of and in the said Place, call'd the *P.* in *G.* aforesaid, within the Bounds and Limits aforesaid, with all and all Manner of his Cattle and living Creatures whatsoever, at all Times of the Year, as the said *R.* hath before in his said Bar alledged: And of this he putteth himself upon the Country: And the said *E.* likewise, &c.

And the said *W. C.* as to any Trespass in the said Place called the *H.* in *G.* aforesaid, of new Assignment, supposed to be done, saith, that he is *Not guilty* thereof: And of this he putteth himself upon the Country; and the said *E.* likewise, &c.

And as to the said Plea of the said *W. C.* afore to the replying pleaded, as before he saith, That he, and all those whose Estate he hath in the said two Mesuages, and two Closes of Pasture, with the Appurtenances, from the Time beyond the Memory of Man have had and been accustomed to have all Manner of Pasture of and in the said Place called the *Penns* in *G.* aforesaid, within the Bounds and Limits aforesaid, with all and all Manner of his Cattle and living Creatures whatsoever, in all Times of the Year, as the said *W.* before in his said Bar hath alledged: And of this he putteth himself

And
*Issue on both
 Replications.*

And also on the
*New Assign-
 ment.*

Pleas, &c. himself upon the Country; and the said *E.* likewise, &c. Therefore, as well as to the trying of that Issue, as of the said other Issues above specified, *Let a Jury come, &c.*

Venire awarded.

Touching awarding Venires, Returns of Posters, Special Verdicts, &c. see before.

Trespass, Assault and Mayhem against
1200.

One Defendant pleads that the Plaintiff challenged him to fight; the other, that he interposed to part them.

AND the said *A.* and *B.* by —, their Attorney, come and defend the Force and Injury, when, &c. and as to the coming with Force and Arms, say that they are *Not guilty* thereof: And of this they put themselves on the Country; and the said *B.* as to the Maiming and Wounding the said *C.* in the Declaration aforesaid mentioned, and above supposed to be done, saith, That he is *Not guilty* thereof: And of this he puts himself upon the Country: And the said *A.* as to the rest of the *Trespass* and *Assault* aforesaid by him supposed to be done, saith, that the said *C.* ought not to have or maintain his said Action thereon against him, because he saith, the said *C.* challenged the said *A.* to fight with him, on the Day and Year aforesaid, at *W.* aforesaid; and thereupon the said *C.* with all his Might endeavoured to beat the said *A.* and would accordingly have beaten him if the said *A.* had not then and there defended himself against the said *C.* and thereupon through the Default of the said *C.* a Fight with Fists ensued between the said *C.* and *A.* and in such Fight the Beating and Wounding by the said Declaration supposed

posed to be committed by the said *A.* on the said *C.* happened; and the said Maiming also by the said Declaration supposed to have been done by the said *A.* to the said *C.* happened through Misfortune, and against the Will of the said *A.* which are the Residue of the said Trespafs and Assault; whereof the said *C.* above complains against him: And this he is ready to verify: Wherefore he prays Judgment whether the said *C.* ought to have his aforesaid Action thereof against him, &c. And the said *B.* as to the Residue of the said Trespafs and Assault aforesaid, by him above supposed to be done, saith, That the said *C.* ought not to have his said Action thereon against him, because he saith, that at the same Time wherein, &c. he the said *C.* and the said *A.* at *W.* aforesaid, were fighting together, and the said *C.* and *A.* on that Account then and there violently assaulted each other, and would then and there have beat, wounded, and ill treated each other: whereupon the said *B.* to keep the King's Peace, and to cause them the said *C.* and *A.* to leave off Fighting and to part them, least the said *C.* and *A.* should do Damage to each other at the same Time, wherein, &c. there gently put his Hands as well upon the said *A.* as upon the said *C.* and prevented them from doing any further Damage to each other, and caused them to leave off Fighting, as it was lawful for him on that Account to do: And this he is ready to verify: Wherefore he prays Judgment whether the said *C.* ought to have his aforesaid Action thereof against him, &c.

W. Hawkins.

Trespafs

Declarations, &c.

Trespass and Assault.

Plea, that the Plaintiff and his Wife were fighting, that Defendant interposed, and by Misfortune tore the Plaintiff's Coat.

AND the said *A.* by —, his Attorney, comes and defends the Force and Injury, when, &c. and as to the coming with Force and Arms, or whatsoever is against the Peace of the said Lord the King, and the Wounding aforesaid above supposed to be done by the said *A.* he the said *A.* says, that he is no wife Guilty thereof as the said *B.* above thereof complains against him: And of this he puts himself upon the Country; and the said *B.* does likewise the same, &c. And as to the Residue of the said Trespass and Assault above supposed to be done, the said *A.* says, that the said *B.* ought not to have or maintain his said Action thereon against him, because he says, that at the said Time, when, &c. he the said *B.* and one *C.* then and still the Wife of the said *B.* were fighting together at *W.* aforesaid in the County aforesaid; and the said *B.* on that Occasion being in great Anger, on the said *C.* his Wife then and there made an Assault, and would have beat, wounded, and evilly treated her; whereupon the said *A.* to keep the Peace of the said Lord the now King, and to cause the said *B.* and *C.* his Wife to desist from their fighting, and least the said *B.* should do any further Mischief to the said *C.* his Wife in his said Anger at the said Time, when, &c. gently laid his Hands on the said *B.* there, and prevented the said *B.* from doing any further Damage to the said *C.* his Wife, as it was lawful for him to do: And the said *A.*

on

on that Occasion in keeping the Peace of our said Lord the now King in Form aforesaid, a little spoiled and tore the Coat and Garments of the said *B.* in rescuing the said *C.* from the Anger of the said *B.* and by the Default of the said *B.* against the Will and Intention of the said *A.* And this he is ready to verify: Wherefore he prays Judgment whether the said *B.* ought to have or maintain his said Action thereof against him, &c.

Plea, &c.

*Trespass, Assault and Imprisonment against
two Defendants.*

AND the said *A.* and *B.* by ——— their Attorney come and defend the Force and Injury, when, &c. And the said *B.* says, that she is not guilty of the said Trespass, Assault and Imprisonment aforesaid, as the said *C.* hath above complained against her: And of this she puts herself upon the Country: And the said *C.* likewise, &c. And the said *A.* as to the coming with Force and Arms, or whatever is against the Peace of the said Lord the now King, says, that he is not in any wise guilty thereof, as the said *C.* hath above complained against him: And of this he puts himself upon the Country; and the said *C.* likewise, &c. And as to the Residue of the said Trespass, Assault and Imprisonment above supposed to have been done, he the said *A.* says, that the said *C.* ought not to have or maintain his said Action therefore against him, because he says, that before the said Time wherein the said Trespass, Assault and Imprisonment is above supposed to have been done,

Plea, Not guilty by one Defendant, the other justifies under the Warrant of a Justice of Peace as Assistant to the Constable.

Pleas, &c. done, *to wit*, on the 22d Day of *November* in the ——— Year aforesaid, at the Parish of *W.* aforesaid in the County aforesaid, one *T. D.* Esq; then one of his Majesty's Justices assigned to keep the Peace in the County aforesaid, and to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the County aforesaid, made his certain Warrant under his Hand and Seal bearing Date the same Day and Year, the Tenor of which said Warrant follows in these Words, *to wit*, to, &c. Which said Warrant was then and there delivered to one *E.* then and there one of the Constables of the Parish of ——— aforesaid in the County aforesaid: By Virtue of which said Warrant the said *E.* and the said *A.* as Assistant to the said *E.* and by his Command afterwards and before the said Time, wherein, &c. *to wit*, on the said fourteenth Day of *January* in the said tenth Year aforesaid, attached and apprehended the said *C.* to bring him before the said Justice, according to the Tenor of the said Warrant: Whereupon the said *C.* then and there made an Assault upon the said *A.* and would have beat, wounded, and ill treated him, upon which the said *A.* then and there defended himself against the said *C.* And the said *A.* says, that the Damage or Harm, if any then and there happened to the said *C.* came from the proper Assault of him the said *C.* in the Defence of the said *A.* And this he is ready to verify: Wherefore he prays Judgment, whether the said *C.* ought to have or maintain his said Action therefore against him, &c.

- Declaration.* 1. *Count for an Assault.*
 2. *for an Assault and Imprisonment.*

AND the said *A.* by ——— his Attorney comes and defends the Force and Injury, when, &c. And as to the coming with Force and Arms, and every thing that is against the Peace of our Lord the now King, and also as to all the Trespass and Assault in the said Declaration first above mentioned, and the aforesaid Battery and Wounding in the said Declaration secondly mentioned, saith, that he is not thereof guilty: And of this he puts himself upon the Country, &c. And as to the Residue of the said Trespass mentioned in the said Declaration, and above supposed to have been committed by the said *A.* he the said *A.* saith, that the said *B.* ought not to have or maintain his aforesaid Action for the same against him, because he says, that before the said Time in which the Residue of the said Trespass is supposed to be done, and at the said Time in which, &c. the said *B.* within the Jurisdiction of the Court herein after mentioned, was indebted unto the said *A.* in 4 *l.* 12 *s.* for so much Money by the said *A.* to the said *B.* at his special Instance and Request lent; and the said *B.* being so indebted, in Consideration thereof, within the Jurisdiction of the said Court herein after mentioned had assumed upon himself, and had there faithfully promised to pay the said 4 *l.* 12 *s.* to the said *A.* which aforesaid Promise and Assuming upon himself the said *B.* had not performed, to

B.R. Plea, Justification that he looied a Pleint against the Plaintiff in the Sheriffs Court, and caused him to be arrested, and aided and assisted the Officer.

Pleas, &c. the Damage of the said *A.* of 99 s. for the Recovery whereof the said *A.* saith, that before the said Time wherein the Residue of the said Trespass is above supposed to have been committed, the said *A.* at the Court of our Lord the now King holden on *Thursday* the 8th Day of *April* in the 9th Year of the Reign of the Lord the now King in the Court of Record of the said Lord the now King before Sir *John Barnard*, Knt. then one of the Sheriffs of the City of *London* aforesaid in his Compter situate in the Parish of *St. Mildred the Virgin* in the *Poultry* in the Ward of *Cheap* in the same City, according to the Custom of the said City, from Time whereof the Memory of Man is not to the contrary, levied a Plaint against the said *B.* in a Plea of 'Trespass on the Case to the said *A.*'s Damage of 99 s. And thereupon then and there in the said Court found Pledges to prosecute his said Plaint, to wit, *John White* and *Richard Chapples*, and then and there in the said Court prayed the Process of the said Court upon the said Plaint to be made to him against the said *B.* Whereupon it was then and there by the said Court, according to the Custom of the said City, from Time whereof the Memory of Man is not to the contrary, by Word of Mouth given in Command to *Robert Gould*, then a Serjeant at Mace of the said Sheriff, and an Officer and Minister of the said Court, that he should take and arrest the said *B.* if he was to be found within the said City, and safely keep him, so that he might have his Body before the said Sheriff at the Court of Record of our said Lord the now King to be held at the *Guildhall* of the said City, situate in.

in the Parish of St. Lawrence in the Old Jury Pleas, &c.
 in the Ward aforesaid on the 24th Day of April then instant, to answer to the said *A.* in his said Plaint; by Virtue of which said Precept he the said *Robert Gould* then and until and after the Return of the said Precept being a Serjeant at Mace of the said Sheriff, and an Officer and Minister of the said Court, and the said *A.* in Aid and Assistance of the said *Robert Gould* afterwards and before the Return of the said Precept, *to wit*, at the said Time when, &c. at *L.* aforesaid in the Parish of St. Mary le Bow in the said Ward of Cheap, gently put their Hands upon the said *B.* to take and arrest him by Virtue of that Precept, and did then and there take and arrest him by Virtue thereof; and the said *Robert Gould* kept and detained the said *B.* in the Custody of him the said *Robert Gould* by Virtue of the said Precept for and during the Time mentioned in the said Declaration for want of the said *B.*'s finding Sureties to appear, according to the Tenor of the said Command at the Return thereof, as it was lawful to do for the Cause aforesaid; which was the Residue of the said Trespafs, whereof the said *B.* hath above complained against the said *A.* And this he is ready to verify: Wherefore he prays Judgment, whether the said *B.* ought to have or maintain his aforesaid Action for the same against him, &c.

And the said *B.* as to the Residue of the said Trespafs above pleaded in Bar by the said *A.* saith, that he for any thing by the said *A.* above in pleading alledged in that Behalf ought not to be barred from having his said Action against him, because he says, that the

*Replication de
injuria sua
propria:*

Declarations, &c.

Writ said *A.* on the same Day and Year in the said Declaration above mentioned, with Force and Arms, &c. of his own Wrong without any such Cause as he the said *A.* in his said Plea hath above alledged, made an Assault upon him the said *B.* and imprisoned him the said *B.* at *L.* aforesaid in the Parish and Ward aforesaid in Manner and Form as the said *B.* hath above complained against him: And this he prays may be inquired of by the Country; and the said *A.* doth the like, &c. Therefore, &c.

Trespass for breaking the Plaintiff's Close, and fishing in his Fishery, &c.

Plea, that the Place, &c. is the Freehold of another, and that as his Servant and by his Command he entered and fished, &c.

AND the said *D.* by *B. F.* his Attorney comes and defends the Force and Injury, when, &c. and as to the coming with Force and Arms, and also as to all the Trespass aforesaid, except the breaking and entering the said Close called *G.* and fishing in the said Fishery there for Fish, and taking and carrying away the said Fish there lately found, says, that he is not thereof guilty: And of this he puts himself upon the Country, &c. And as to the breaking and entering of the said Close called *G.* and fishing in the said Fishery there for Fish, and taking and carrying away the said Fish there lately found, above supposed to be done, he the said *D.* says, that the said *P.* ought not to have his aforesaid Action for the same against him, because he says, that the said Close, and also the Soil and Ground thereof, and the said Fishery therein is, and at the said several Times wherein, &c. was the Freehold

Freehold of *H. J.* and *K.* his Wife in Right of the said *K.* Whereupon the said *D.* as Servant of the said *H. J.* and by his Command, on the said ——— Day of ——— aforesaid, and the divers other Times aforesaid, broke and entered the said Close called *G.* as the Close and Freehold of the said *H.* and fished in the said Fishery there as in the Fishery and Freehold of the said *H.* for Fish, and took and carried away the said Fish there lately found, as found in the said Fishery of the said *H.* as it was lawful for him to do: And this he is ready to verifiy: Wherefore he prays Judgment whether the said *P.* ought to have his aforesaid Action against him.

W. Hawkins.

Trespafs for breaking Plaintiff's House.

AND the said *D.* by *E. F.* his Attorney comes and defends the Force and Injury, when, &c. and as to the coming with Force and Arms, says, that he is not thereof guilty: And of this he puts himself on the Country, &c. As to the Residue of the said Trespafs above supposed to be done by the said *D.* he the said *D.* says, that the said *P.* ought not to have his said Action for the same against him, because he says, that the said *P.* before the said Time wherein the said Trespafs is above supposed to be done, and at the same Time wherein, &c. kept the said House wherein, &c. as a Tavern for the exposing to Sale and selling Wine therein to his Majesty's Subjects, and for those Subjects to

Plas. that Plaintiff's House is a Tavern, and that Defendant went in to drink.

Plea, &c.



drink the said Wine so bought there daily at all seasonable Times: Whereupon the said D. at the said Time wherein, &c. entered the said House, the Door thereof being then open, and it being a seasonable Time to buy a Pint of Wine, and to drink the same Wine there in the same House; and in the said House then and there bought a Pint of Wine, and drank the same in the said House, as it was lawful for him to do; which is the said Residue of the said Trespass, whereof the said P. hath above complained against the said D. And this he is ready to verify: Wherefore he prays Judgment whether the said P. ought to have his aforesaid Action for the same against him, &c.

Trespass against several Defendants.

Plea, one Defendant as Bailiff of a third Person, and the other Defendants as Servants of such Bailiff entered to distrain for Rent,

AND the said D. E. F. G. H. J. and K. by ——— their Attorney come and defend the Force and Injury, when, &c. and as to the coming with Force and Arms, or whatever else is against the Peace of the said Lord the now King, and as to all the Trespass aforesaid, except the breaking and entering the said Close, and hindering and disturbing the said P. in his quiet and peaceable Possession and Occupation of the said Close, and hindering and keeping out the said P. from the Use, Possession and Advantage of the Close aforesaid for the Space of ———, and taking and carrying away three Cart-Loads of Wheat in the Straw, and three Cart-Loads of Oats in the Straw there being erected, and put in Stacks not thrashed, of the Goods and Chattels

tels

tels aforesaid there lately found, say they are in no wise guilty thereof: And of this they put themselves on the Country; and the said P. likewise, &c. And as to the said breaking and entering the said Close, and hindering and disturbing the said P. in his quiet and peaceable Possession and Occupation of the said Close, and hindering and keeping out the said P. from the Use, Possession and Advantage of the Close aforesaid for the Space of ———, and the taking and carrying away three Cart-Loads of Wheat in the Straw, and three Cart-Loads of Oats in the Straw there being erected and put into Stacks not thrashed, of the Goods and Chattels aforesaid there lately found, and by them the said D. E. F. G. H. I. and K. above supposed to be done, say, that the said P. ought not to have or maintain his said Action thereof against them, because they say, that the said Close, wherein the said Trespass is supposed to be done, is, and at the Time when, &c. was eight Acres of Land, with the Appurtenances called and known by the Name of H. lying in the Parish aforesaid, whereof the said Close called the W. is and at the Time when, &c. was Parcel, and with the same enjoyed and occupied, of which said Close called H. with the Appurtenances whereof, &c. one L. M. before the said Time when, &c. was seised in his Demefne as of the Fee; and being so seised thereof the said L. M. long before the said Time, when, &c. to wit, on the ——— Day of ——— in the Year of our Lord ——— at the Parish of St. S. aforesaid in the County aforesaid, demised to the said P. the said Close called H. with the Appurtenances, whereof, &c. To have and to hold to

the said P. from the — Day of — in that Year for one whole Year then next following, and so from Year to Year, so long as it should please both the said Parties; yielding and paying therefore unto the said L. M. yearly, and every Year wherein the said P. should have and occupy the said Close, with the Appurtenances, whereof, &c. by Virtue of the said Demise, the yearly Rent of 9 l. at the Feasts of, &c. by even and equal Portions; by Virtue of which said Demise the said P. entered into the said Close called H. with the Appurtenances, whereof, &c. and was thereof possessed until and upon the said Time when, &c. and held and occupied the same at the same Time when, &c. by Virtue of which said Demise, and because 13 l. 10 s. of the Rent aforesaid for one Year, and the half of one, other Year ended at and upon the — Day of — in the said — Year of the Reign of the said Lord the King on the said — Day of — and at the same Time when, &c. were in Arrear, and not paid to the said L. M. the said D. as Bailiff of the said L. M. and by his Command, and the said E. F. G. H. J. and K. as Servants of the said D. and by his Command, at the said Time, when, &c. entered into the said Close called H. wherein, &c. whereof, &c. to distrain for that Rent so being in Arrear, and seized and secured the said three Cart-Loads of Wheat in the Straw, and three Cart-Loads of Oats in the Straw there, *to wit*, in the said Close called W. Parcel of the said Close called H. as aforesaid, and with the same enjoyed, being erected and put into Stacks not thrashed, at the same Time when, &c. in the Name of a Distress of that Rent

Rent so being in Arrear, the same Close called the *W. Parcel*, &c. and upon the same being erected and put in Stacks as aforesaid, and the same Wheat and Oats there, *to wit*, in the said Close called the *W. Parcel*, &c. where the same were found, &c. for and in the Nature of a Distress locked up and detained, and immediately after that Distress so seized and secured, *to wit*, on the said — Day of — in the — Year aforesaid the said *D.* left Notice of such Seizure and securing of the said Wheat and Oats aforesaid, and of the aforesaid Cause thereof, at the said Close called the *W. Parcel*, &c. the said Close Parcel, &c. being the most notorious Place of the Premises as aforesaid demised; which Barley and Oats so as aforesaid distrained and detained were not replevied within the Space of five Days next after the said Distress and Notice of the Cause of the same Distress aforesaid; whereupon the said *D.* as Bailiff of the said *L. M.* and the said *E. F. G. H. J. and K.* as Servants of the said *D.* together with one *N. O.* then being one of the Constables of the said Parish of — immediately after the Expiration of the said five Days next after the said Distress and Notice as aforesaid, so as aforesaid left, *to wit*, on the — Day of — in the — Year aforesaid, at the Parish of — aforesaid, *to wit*, in the said Close called the *W. Parcel*, &c. caused the said Wheat and Oats to be appraised in due Manner, according to the Form of the Statute in such Case made and provided, by one *John D.* and *Richard R.* two Appraisers then and there sworn by the Constable aforesaid, according to the Form of the same Statute, to appraise

Wheat, &c. the said Wheat and Oats truly, according to the best of their Knowledge, and the said Wheat and Oats were then and there appraised at 19 *l.* and thereupon the said *D. E. F. G. H. J.* and *K.* afterwards, *to wit*, the same Day and Year last aforesaid, at, &c. aforesaid, then and there sold the Wheat and Oats aforesaid to divers Persons to them unknown, for the best Price that could be got for the same, *to wit*, for 19 *l.* And the said *D. E. F. G. H. J.* and *K.* further say, that 13 *l.* 10 *s.* Parcel of the said 19 *l.* was then and there paid to the said *L. M.* in Satisfaction of the said Rent so being in Arrear as aforesaid, and 2 *l.* 10 *s.* another Parcel of the said 19 *l.* were applied towards the Charges of the Distress, Appraisement and Sale of the Wheat and Oats aforesaid in Form aforesaid made, and the Residue of the said 19 *l.* *to wit*, 3 *l.* still remains, and is in the Hands of the Constable aforesaid for the Use of the said *P.* *to wit*, at the Parish aforesaid; and in doing this the said *D. E. F. G. H. J.* and *K.* hindred and disturbed the said *P.* in his peaceable and quiet Possession and Occupation of that Close called *H.* whereof, &c. as to the Seifure in the Name of a Distress of the Wheat and Oats aforesaid in the said Close called *W.* Parcel, &c. and with the said Close called *H.* as aforesaid occupied, and hindred and kept out the said *P.* from the Use, Possession and Advantage of the Close aforesaid for the Time aforesaid of the securing and detaining of the said Wheat and Oats distrained in the said Close called *W.* Parcel, &c. *to wit*, from the said Time of the Seifure of the said Wheat and Oats as aforesaid, until the Time of the Sale of the same, doing

doing as little Damage there as could be on that Occasion, which are the same breaking and entering of the said Close, and hindering and disturbing of the said P. in his quiet and peaceable Possession and Occupation of that Close, and hindering and keeping the said P. from the Use, Possession and Advantage of the Close aforesaid for the Space of —, and taking and carrying away three Cart-Loads of Wheat in the Straw, and three Cart-Loads of Oats in the Straw, there erected and put in Stacks not thrashed, of the Goods and Chattels aforesaid there lately found, whereof the said P. above complains against them in Form aforesaid: And this they are ready to verify: Wherefore they pray Judgment whether the said P. ought to have or maintain his said Action thereof against them, &c.

Trespass against two Defendants.

AN D the said D. E. by — their Attorney come and defend the Force and Injury, when, &c. and as to the coming with Force and Arms, and whatsoever is against the Peace of the said Lord the King, and also as to the taking and carrying away of six Chairs, &c. Parcel of the said Goods and Chattels in the said Bill above mentioned, and the converting and disposing of the said Goods and Chattels in the said Bill mentioned to their own proper Use, and the keeping out and withholding the said P. from the Possession and Occupation of his said House, they say, that they are not in any wise guilty thereof: And of this they put themselves upon the Country; and

B. R.

Plea Not guilty as to Part, as to the Residue a Distress for Rent by one Defendant as Bailiff, and by the other as his Servant.

and the said *P.* likewise, &c. And as to the taking and carrying away of the Residue of the said Goods and Chattels in the said Bill above mentioned by them supposed to be done, the said *D.* and *E.* say, that the said *P.* ought not to have or maintain his said Action thereon against them, because they say, that the said House in which the Taking of the said Goods and Chattels is supposed to be done is, and at the said Time when, &c. and long before was one Mesuage, with the Appurtenances, situate and being at *W.* aforesaid; of which said Mesuage, with the Appurtenances, one *R. R.* before the said Time when, &c. and at the said Time when, &c. was seised in his Demesne as of Fee; and being so seised thereof, the said *R. R.* before the said Time when, &c. *to wit*, on the — Day of — in the Year of our Lord — at *W.* aforesaid, demised to the said *P.* the aforesaid Mesuage, with the Appurtenances wherein, &c. To have and to hold to the said *P.* from the Feast of — then last past for one whole Year from thence next coming, and so from Year to Year, so long as it should please both the said Parties; yielding and paying therefore unto the said *R. R.* the Rent of —, at, &c. by even and equal Portions; by Virtue of which said Demise the said *P.* entered into the said Mesuage, with the Appurtenances, wherein, &c. and was thereof possessed until and upon the said Time when, &c. and held and occupied the same at the said Time when, &c. By Virtue of which said Demise, and because — of the Rent aforesaid for — ended at the Feast of — in the — Year aforesaid, at that Feast in the same Year, and at

In Trespass.

509

Plea, &c.

at the same Time when, &c. were in Arrear, and not paid, the said *D.* as Bailiff of the said *R. R.* and by his Command, the said *E.* as Servant of the said *D.* and by his Command, on the — Day of — in the — Year aforesaid, entered into the said Mesuage, wherein, &c. (the Doors of the said Mesuage being then open) to distrain for that Rent so being in Arrear; and the Residue of the Goods and Chattels aforesaid in the said Bill mentioned there then being took and seised in the Name of a Distress for that Rent so being in Arrear, and immediately after that Distress so taken, *to wit*, the same Day and Year, gave Notice to the said *P.* at the Mesuage aforesaid (the said Mesuage being the most notorious Place of the Premises so as aforesaid demised) of such Distress, and the aforesaid Cause thereof, and that the Residue of the Goods and Chattels aforesaid in the said Bill above mentioned were not replevied within the Space of five Days next after the Distress and Notice of the Cause of the same Distress given to the said *P.* as aforesaid; whereupon the said *D.* as Bailiff of the said *R. R.* and the said *E.* as Servant of the said *D.* together with one *H. J.* then being one of the Constables of the Parish aforesaid, in due Manner, according to the Form of the Statute in such Case lately made and provided, after the Expiration of the said five Days next after the Distress and Notice aforesaid given as aforesaid, *to wit*, on the — Day of — in the — Year aforesaid, at *W.* aforesaid in the County aforesaid, caused the Residue of the said Goods and Chattels to be appraised by one *W. D.* and *T. M.* two Appraisers then and there sworn by the said Constable truly to appraise the said Goods and Chattels

Pleas, &c. Ghattels, according to the best of their Knowledge, according to the same Statute; and those Goods and Chattels by the said Appraisers were then and there appraised at —; and thereupon the said *D.* as Bailiff of the said *R. R.* and by his Command, and the said *E.* as Servant of the said *D.* and by his Command, afterwards, *to wit,* on the — Day of — in the — Year aforesaid, at *W.* aforesaid in the County aforesaid, sold the Residue of the said Goods and Chattels to divers Persons unknown to the said *D.* and *E.* for the best Price that could be obtained for the same, *to wit,* for —: And the said *D.* and *E.* further say, that — Parcel of the said — were then and there paid to the said *R. R.* to the proper Use of the said *R. R.* in Satisfaction of the Rent aforesaid, so as aforesaid being in Arrear, and — another Parcel of the said — were applied towards the Charges of the Distress, Appraisement and Sale of the said Goods and Chattels in Form aforesaid made, and the Residue of the said —, *to wit,* — were paid into the Hands of the Constable aforesaid for the Use of the said *P.* and there for his Use still remains, and is, *to wit,* at *W.* aforesaid in the County aforesaid, which are the same Breaking and Entering, &c. whereof the said *P.* above complains against them in Form aforesaid: And this they are ready to verify: Wherefore they pray Judgment, whether the said *P.* ought to have or maintain his said Action thereon against them, &c.

And

In Trespass.

511

Pleas, &c.

And the said D. by — his Attorney comes and defends the Force and Injury, when, where and in such Manner as the Court shall take the same into Consideration; and as to the coming with Force and Arms, and every thing that is against the Peace of his present Majesty, and also as to all the Trespass aforesaid, except the breaking and entering the said Close of the said P. and treading down and consuming the Grass of the said P. there growing, with his Feet in walking, and eating up, treading down and consuming with Beasts other Grass and Corn of the said P. there likewise growing, above supposed to be done by the said D. he the said D. says that he is in no wise guilty thereof in Manner and Form as the said P. above thereof complains against him: And of this he puts himself upon the Country; and the said P. likewise, &c. And as to the breaking and entering the said Close of the said P. and treading down and consuming the Grass of the said P. there growing, with his Feet in walking, and eating up, treading down, and consuming with Beasts other Grass and Corn of the said P. there likewise growing, above supposed to be done by the said D. he the said D. says, that the said P. ought not to have or maintain his said Action against him for the same, because he says, that he the said D. hath not, nor claimeth any thing, nor at the said Time when, &c. had or claimed to have any thing in the said Close, with the Appurtenances, or in any Parcel thereof, but altogether disavows and disclaims to have, and at the said Time when, &c. to have had any thing in the said Close, with the Appurtenances,

B. R.
Plea, Not
guilty as to
Part, as to
the Residue
Disclaimer of
Title, Trespass
involuntary,
and Tender of
Amends.
Stat. 21 Jac. 1.
c. 15.

Pleas, &c.

tenances, or in any Parcel thereof, or any Title or Claim thereto: And the said *D.* further saith, that the said Trespass, as to the breaking and entering the said Close of the said *P.* and treading down and consuming the Grass of the said *P.* there growing, with his Feet in walking, and eating up and treading down and consuming with Beasts other Grass and Corn of the said *P.* there likewise growing, above supposed to be done by the said *D.* was done by Negligence, and against the Will of the said *D.* And that the said *D.* after the said Trespass above supposed to be done, and before the Day of exhibiting the Bill of the said *P.* to wit, on the — Day of — in the Year of our Lord — at the Parish of — aforesaid in the County aforesaid, offered to pay to the said *P.* the Sum of 10 s. of lawful Money of *Great Britain* in Amends and Satisfaction for the Trespass aforesaid in breaking and entering the said Close of the said *P.* and treading down and consuming the Grass of the said *P.* there growing, with his Feet in walking, and eating up, treading down and consuming with Beasts other Grass and Corn of the said *P.* there likewise growing, above supposed to be done by the said *D.* Which said 10 s. so offered then and there were a sufficient Amends for the Trespass aforesaid; and which said 10 s. so offered the said *P.* then and there refused to accept of the said *D.* in Amends and Satisfaction for the Trespass aforesaid: And this he is ready to verify: Wherefore he prays Judgment, if the said *P.* ought to have or maintain his said Action against him for the same.

Draper.

And

And the said *P.* as to the said Plea of the said *D.* above pleaded in Bar as to the said breaking and entering the said Close of the said *P.* and treading down and consuming the Grass of the said *P.* there growing, with his Feet in walking, and eating up, treading down and consuming with Beasts other Grass and Corn of the said *P.* there likewise growing above done, saith, that he by any thing above alledged ought not to be barred from having his aforesaid Action thereon against the said *D.* because he says, that the said *10 s.* by the said *D.* in Form aforesaid offered to be paid in Amends and Satisfaction for the Trespass aforesaid, in breaking and entering the Close of the said *P.* and treading down and consuming the Grass of the said *P.* there growing, with his Feet in walking, and eating up, treading down and consuming with Beasts other Grass and Corn of the said *P.* there likewise growing, were not sufficient Amends for that Trespass in Manner and Form as the said *D.* hath above in pleading alledged: And this he prays may be inquired of by the Country.

Plea, &c.

*Replication,
Amends tendered not sufficient.*

Trespass.

AND the said *D.* by ———, his Attorney, comes and defends the Wrong and Injury, when, &c. And as to the coming with Force and Arms, or any thing done against the Peace of our said now Lord the King, he says, that he is *Not guilty* thereof: And of this he puts himself upon the Country; and the said *P.* doth so likewise: And as to the Residue of the Trespass aforesaid, above supposed to be committed, he the said *D.*

Plea, Justification as seized in common with Plaintiff.

Declarations, &c.

Pleas, &c.

faith, That the said P. ought not to have or
 maintain his said Action therefore against
 him, because he says, that the said several
 Closes in which the said Trespass is above
 supposed to be done are situate, lying and
 being in the Parish of S. in the County of D.
 and that long before and at the Time in which
 the said Trespass is above supposed to be done,
 he the said D. was and ever since hath been
 and now is seised of and in one undivided
 fourth Part of and in the said Closes in which,
 &c. with the Appurtenances in his Demesne
 as of Fee in common with the said P. and
 being so seised, he the said D. at the said
 Time in which, &c. did break and enter the
 said Closes, and did eat up, tread down, and
 consume with his Cattle in the said Declara-
 tion mentioned the Corn, Clover and Grass
 in the said Declaration mentioned, then there
 growing in the said Closes, and did throw
 down and prostrate the Gates belonging to the
 said Closes, and did continue the eating up,
 treading down, and consuming the Corn,
 Clover and Grass aforesaid, with the Cattle
 aforesaid, at divers Days and Times from the
 said — Day of — in the Year of our Lord
 — until the — Day of — in the
 Year of our Lord — as it was lawful for
 him to do; which is the same Residue of the
 Trespass aforesaid, whereof the said P. above
 complains against him; without this, that he
 the said D. is guilty of any Trespass in any
 other Closes of the said P. than as aforesaid;
 And this he is ready to verify; Wherefore
 he prays Judgment, whether the said P. ought
 to have or maintain his said Action against
 him.

J. Belfield.

The END.

Ex. G. A. a

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